TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 218 92.

JAMES H. EASTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED MAY 4, 1903.

(18,143.)

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OCTOBER TERM, 1901.

No. 313.

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INDEX.

	Original.	Print.
Caption	*a*	1
Appellant's abstract of record	1	1
Indictment	1	1
Minutes of testimony before grand jury (omitted in printing)	2	—
Motion to set aside indictment (part omitted in printing)	5	2
Demurrer to indictment (" " ")	7	3
Plea of not guilty	10	4
Bill of exceptions	10	4
Testimony of John French (part omitted in printing)	10	4
Exhibit 1—Certificate of deposit	11	5
Testimony of Wm. H. Dent	12	5
Exhibit 2—Comptroller's certificate, August 6, 1864	12	5
3—Comptroller's certificate, Feb. 24, 1883	13	6
Testimony of Otto Arneson (part omitted in printing)	13	6
E. R. Baker (" " ")	17	8
W. E. Lucas (omitted in printing)	45	—
C. H. Graves (" " ")	48	—
Ray T. Lewis (" " ")	49	—
M. Norris (" " ")	50	—
Frank Parkinson (" " ")	50	—
C. R. Carpenter (" " ")	50	—
John G. Stradley (" " ")	51	—

JUDD & DETWEILER, PRINTERS. WASHINGTON, D. C., OCTOBER 25, 1901.

	Original.	Print
Testimony of Frank B. Warren (omitted in printing)	52	—
G. J. Lomen (" ")	53	—
A. W. Grow (" ")	54	—
Knudt Thompson (" ")	54	—
E. H. Van Antwerp (" ")	55	—
Wm. V. Baker (" ")	56	—
Wm. H. Klemme	58	18
A. J. Arneson (omitted in printing)	59	—
J. M. Akers (" ")	59	—
W. H. Dent (recalled), (part omitted in printing)	60	19
Fred R. Akers (omitted in printing)	79	—
A. M. Perry (" ")	80	—
J. R. Rollins (" ")	81	—
C. Christen (" ")	81	—
J. C. Webster (" ")	81	—
Stipulation as to books of the bank	81	21
Testimony of E. W. D. Holway (parts omitted in printing)	82	21
E. J. Curtin (omitted in printing)	90	—
Henry Elvidge (" ")	91	—
Statement as to Exhibits 226 to 239	91	22
Exhibit 226—Letter, Easton to Perry (omitted in printing)	92	—
227—Letter, Easton to Perry, September 16, 1896 (omitted in printing)	93	—
228—Letter, Easton to Burdick, September 1, —— (omitted in printing)	94	—
229—Letter, Easton to Burdick, September 5, 1896 (omitted in printing)	94	—
230—Letter, Easton to Burdick, September 6, 1896 (omitted in printing)	95	—
231—Letter, Easton to Burdick, September 8, 1896 (omitted in printing)	96	—
232—Letter, Easton to Burdick, September 10, 1896 (omitted in printing)	98	—
233—Letter, Easton to Burdick, September 10, 1896 (omitted in printing)	98	—
234—Letter, Easton to Burdick, September 13, 1896 (omitted in printing)	99	—
235—Letter, Easton to Burdick, September 14, 1896 (omitted in printing)	100	—
236—Letter, Easton to Burdick, September 16, 1896 (omitted in printing)	101	—
237—Letter, Easton to Burdick, September 1, 1896 (omitted in printing)	102	—
238—Letter, Easton to Burdick, September 21, 1896 (omitted in printing)	102	—
239—Letter, Easton to Burdick, Nov. 10, 1896	103	22
Plaintiff rests	104	22
Motion of defendant for verdict in his favor	104	22
Instructions asked by defendant (part omitted in printing)	106	23
Instructions given	108	24
Verdict	115	29

	Original.	Print
Motion in arrest of judgment...(part omitted in printing)..	116	30
Motion for new trial.....(" " ")..	118	31
Judgment.....	122	31
Notice of appeal, &c.....	123	32
Statement as to bill of exceptions.....	123	32
Assignment of errors..... (parts omitted in printing)..	124	32
Index to abstract..... (omitted in printing)..	131	—
Appellee's additional abstract.....(" ")..	133	—
Testimony of Wm. H. Dent.....(" ")..	134	—
Otto O. Arneson.....(" ")..	151	—
E. R. Baker.....(" ")..	159	—
W. E. Lucas.....(" ")..	164	—
G. H. Graves.....(" ")..	168	—
Ray T. Lewis.....(" ")..	172	—
M. Morris.....(" ")..	175	—
Frank Parkinson.....(" ")..	176	—
C. Carpenter.....(" ")..	178	—
John G. Stradley.....(" ")..	178	—
Frank B. Warren.....(" ")..	180	—
A. W. Grow.....(" ")..	181	—
Knudt Thompson.....(" ")..	183	—
G. J. Lomen.....(" ")..	185	—
E. H. Van Antwerp.....(" ")..	189	—
Wm. V. Baker.....(" ")..	190	—
J. M. Akers.....(" ")..	191	—
J. N. Houck.....(" ")..	192	—
Fred R. Akers.....(" ")..	193	—
A. M. Perry.....(" ")..	194	—
J. C. Rollins.....(" ")..	197	—
C. Christen.....(" ")..	197	—
J. C. Webster.....(" ")..	199	—
E. W. D. Holway.....(" ")..	200	—
E. J. Curtin.....(" ")..	215	—
Harry Elvidge.....(" ")..	219	—
Index.....(" ")..	221	—
Appellant's abstract controverting that of appellee (omitted in printing).....	222	—
Submission.....	224	34
Opinion.....	224	34
Judgment.....	232	38
Petition for writ of error.....	233	38
Order allowing writ of error.....	235	40
Writ of error.....	236	40
Bond.....	237	41
Citation and service.....	240	43
Assignment of errors.....	241	43
Clerk's certificate.....	244	45
Statement of errors and designation by plaintiff in error of parts of record to be printed.....	245	45

a Pleas before the supreme court of Iowa in a cause therein tried and determined, wherein The State of Iowa was plaintiff and James H. Easton defendant and appellant.

Be it remembered that on the 13th day of December 1899, there was filed in the supreme court of Iowa, by said appellant, a printed abstract of the record, the same being in the words and figures following, to wit:

1 In the Supreme Court of Iowa, January Term, 1900.

THE STATE OF IOWA
vs.
JAMES H. EASTON, Appellant. } Criminal.

Appeal from district court, Fayette county—Hon. A. N. Hobson, judge.

J. B. Powers, Dan. Shea, Clements & Clements, and H. T. & C. W. Reed, for appellant.

Milton Remley, attorney general; H. P. Hancock, county attorney; E. P. Johnson, and James H. Trewin, for appellee.

Appellant's Abstract of Record.

At the May term, 1898, of the district court of Iowa in and for Winnesheik county, and to wit: on June 1st, 1898, the grand jury of said county, duly empaneled and sworn, (Thomas Rice selected as foreman), returned to said court the following

Indictment

against the defendant James H. Easton, omitting caption and formal parts), charging

That said James H. Easton on or about the 21st day of August, A. D. 1896, in the county of Winnesheik and State of Iowa,
2–4 aforesaid, being then and there engaged in the banking business as an officer, to wit: president, of the bank known and styled as the First National Bank of Decorah, located and doing business as a bank of deposit and banking in the city of Decorah, in the county of Winnesheik and State of Iowa, did as president of said bank as aforesaid, unlawfully, wilfully, knowingly and feloniously permit, connive at, encourage, accept, and receive on and for deposit in the said bank known as the First National Bank of Decorah, as aforesaid, a certain deposit in lawful paper money, a more particular description of which is to these grand jurors unknown, of and in the sum of one hundred dollars, of and from one John French, being then and there the property of said John French and of the value of $100, the said bank being then and there insolvent, and the said James H. Easton, the defendant aforesaid, then and there well knowing the said bank was insolvent, contrary to

and in violation of the statute of the State of Iowa in such case made and provided.

Endorsed "A true bill" and signed "Thomas Rice, foreman of the grand jury."

Which indictment was duly presented in open court in the presence of the grand jury, and marked "filed" by the clerk of said court on said June 1st, 1898.

* * * * * * *

5 The defendant was duly arraigned upon said indictment at the September term 1898 of said court, and at the November term 1898 thereof, upon his application, the place of trial was changed to Fayette county.

At the March 1899 term of the district court in and for Fayette county the cause came regularly on for trial before Hon. A. N. Hobson, judge of said court, and on the eighth day of said term, to wit: March 14, 1899, the defendant filed a motion to set aside the indictment upon the following grounds, to wit:

* * * * * * *

6 Second.

1st. That it appears from said indictment that the deposit therein referred to was accepted by this defendant as president of a national bank, and received on deposit in and for a national bank.

2nd. That the law of Iowa under which said indictment is found, in so far as it attempts to make the acceptance and receipt of deposits in and for national banks, by their officers and agents a crime, is contrary to and in violation of the Constitution and laws of the United States; to wit:—the fourteenth amendment to said Constitution and the national banking laws of the United States, and void in

(*a.*) That it unlawfully discriminates against said banks, and their officers and agents, and makes an act by them an offence which is not so if done by corporations other than banking corporations or by persons not conducting a banking business in said State;

(*b.*) That it is an attempt to regulate and control the business of such national banks, their officers and agents, which is a matter that is within the exclusive control of the Congress of the United States, and upon which it has legislated;

(*c.*) That it attempts to prohibit, and punish by fine and imprisonment, the doing of an act by an officer or agent of a national bank, which act is expressly authorized and permitted by the laws of the United States aforesaid;

3rd. That this court has no jurisdiction to inquire into, hear, try or determine the act of this defendant alleged in said indictment to have been done by him for

That said act was done by this defendant under and by virtue of, and in pursuance of the laws of the United States aforesaid, and not otherwise, and that said indictment and all process based thereon are wholly void,

7 4th. That said law of the State of Iowa is void for the further reason that it is not uniform in its operation, and is in violation of the constitution of the State of Iowa in that it unlawfully discriminates against banking corporations and their officers and other persons engaged in the banking business, and makes the incurring of an indebtedness by them on account of a deposit accepted or received by them an offence, which is not an offence if done by other persons or corporations.

Which motion and each division and ground thereof was overruled by the court; to which ruling the defendant at the time duly excepted.

The defendant thereupon filed the following

Demurrer to the Indictment,

viz:

* * * * * * *

2nd. That said indictment contains matter, which if true, would constitute a legal defense or bar to the prosecution.

* * * * * * *

8 7th. That said First National Bank of Decorah, Iowa, is and was at the time alleged in said indictment, a national bank; which bank could only lawfully exist or do a banking business under and by virtue of the laws of the United States, and that this defendant is, and was at the time alleged in said indictment, president of said bank, and as such accepted and received on deposit in and for said bank the alleged deposit therein referred to.

8th. That the acts of the defendant stated in the indictment constitute no crime, because the statute of the State of Iowa prohibiting the receiving of deposits by a bank when it is insolvent, applies only to banks incorporated or doing business under the authority of the laws of this State and does not apply to national banks incorporated, organized or doing business under the acts of Congress.

9th. That this court has no jurisdiction to inquire into, hear, try, or determine the act of this defendant in so accepting the said deposit in and for said national bank for

That said act of defendant in so accepting and receiving the said deposit in and for said bank is an act which is expressly authorized and permitted by the laws of the United States under which said First National Bank of Decorah, Iowa, is organized or incorporated.

10th. That the law of Iowa under which said indictment is found, if it applies to national banks, or makes the accepting or receiving of deposits by said banks and their officers and agents an offence, is in violation of the Constitution and laws of the United States in

(*a.*) That it abridges the privileges and rights of such banks and their officers as given them by the laws of the United States

9 and deprives the officers and agents of said banks of the equal protection of the laws as guaranteed to them by the Constitution of the United States.

(*b.*) That it unlawfully discriminates against said banks and their officers, and makes an act done by them an offence, which is not so

made, if done by corporations other than banks or by persons not conducting a banking business;

(*c.*) That it is an attempt to regulate and control the business of national banks, organized and existing under the laws of the United States, which is a matter within the exclusive control of the Congress of the United States and upon which it has legislated;

(*d.*) That it attempts to prohibit, and punish by fine and imprisonment, the accepting or receiving deposits for and in a national bank by the officers and agents thereof, which acts are expressly authorized and permitted by the laws of the United States under which such banks are organized and authorized to transact the business of banking;

(*e.*) That it is repugnant to and in direct conflict with the Constitution and laws of the United States, and is wholly void.

11th. That said act is void for the further reason that it is in violation of the constitution- of the United States and of the State of Iowa in that it is not uniform in its operation and unlawfully discriminates against banking corporations and their officers and persons doing banking business, and makes an offence of the incurring of an indebtedness by them for and on account of a deposit accepted or received by them, which act is not an offence if done by other corporations or their officers, or persons not doing a banking business, in the State of Iowa.

Which demurrer and each ground thereof was overruled by the court; to which ruling the defendant at the time duly excepted.

Thereupon the defendant pleaded to said indictment that
10 he was not guilty of the offence charged therein.

A jury was thereupon duly empaneled to try said cause. Upon such trial the following testimony was adduced and proceedings had, all of which is incorporated in a bill of exceptions duly signed by said judge and made a part of the record of said cause, to wit:

Plaintiff's Testimony.

(The pages given are of the transcript of the testimony as made by the reporter.)

JOHN FRENCH (page 22): My age is 59; reside in Frankville, Winnesheik Co., Iowa, know defendant J. H. Easton and have for twenty-five years, and know the First National Bank of Decorah; that was located on Water street in the city of Decorah, Winnesheik county, Iowa. On August 21st, 1896, I went into the First National Bank of Decorah and gave the defendant, James H. Easton, one hundred dollars; he counted it, put it on a slip, and handed it to some of his clerks who drew up a certificate and handed it to Mr. Easton and he signed it and gave it to me. Mr. Easton took the money; it was paper money, in five, ten and twenty dollar bills. Plaintiff's Exhibit "I" shown the witness. That is the paper I got from Mr. Easton at that time; after signing it he handed it to me.

Plaintiff offers same in evidence marked Plaintiff's Exhibit "I."

* * * * * * *

11 The plaintiff then read in evidence its Exhibit 1, which is as follows:

STATE OF IOWA.

The First National Bank of Decorah.

$100. AUGUST 21, 1896.

John French has deposited in this bank one hundred dollars, payable to the order of himself six months from date in current funds on the return of this certificate properly endorsed, with interest at the rate of 4 per cent. per annum. No interest after maturity. This certificate will not be paid before due.

Certificate of deposit. Not subject to check.

No. 17689.

JAS. H. EASTON, *Pres.*

That money I gave Easton belonged to me and was worth one hundred cents on the dollar. I have received from the receiver, Mr. Dent, 40 per cent. at different times after August 21, 1896.

* * * * * * *

12 WILLIAM H. DENT (page 36): Am receiver of the First National Bank of Decorah, and have been since November 24, 1896. As such receiver the assets of the bank came into my possession about December 4, 1896; I have been in possession of the assets and the books and papers of the bank since that time. I have in my possession the certificate of authority of the First National Bank of Decorah to do business. The witness produces such certificate and it is marked Plaintiff's Exhibit No. "2." This I found among the papers of the bank.

Plaintiff offers same in evidence as its Exhibit No. "2," which is as follows:

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C., *August* 6, 1864.

Whereas, by satisfactory evidence presented to the undersigned, it has been made to appear that the First National Bank of Decorah, in the village of Decorah, in Winnesheik county, Iowa, has been duly organized under and according to the requirements of an act of Congress entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, and has complied with all the provisions of said act required to be complied with before commencing the business of banking under said act.

Now, therefore, I, Hugh McCulloch, Comptroller of the Currency, do hereby certify that the First National Bank of Decorah, Iowa, in the village of Decorah, Winnesheik county, in said State, is authorized to commence the business of banking under the act aforesaid.

s

13 In testimony whereof, witness my hand and seal of office this sixth day of August, 1864.

[SEAL.] HUGH McCULLOCH,
Comptroller of the Currency.

I also have in my possession the certificate of renewal of the charter of the First National Bank of Decorah, which I now produce.

Plaintiff offers it in evidence as its Exhibit No. "3," which is as follows:

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C., *February* 24, 1883.

Whereas, by satisfactory evidence presented to the undersigned it is made to appear that the First National Bank of Decorah, Iowa, in the village of Decorah, Winnesheik county, Iowa, has complied with all the provisions of an act of Congress enabling national banking associatians to extend their corporate existence and for other purposes, approved July 12, 1882.

Now, therefore, I, John J. Knox, Comptroller of the Currency, do hereby certify that the First National Bank of Decorah, Iowa, in the village of Decorah, Winnesheik county, Iowa, is authorized to have succession for the period specified in its amended articles of association, viz., until the close of business February 24, 1903.

In testimony whereof, witness my hand and seal of office this 24th day of February, 1883.

[SEAL.] JOHN J. KNOX,
Comptroller of the Currency.

I also have in my possession as receiver the directors' minute books of the First National Bank of Decorah. These are the books. They are designated as Record A, First National Bank of Decorah, and Record B, First National Bank of Decorah.

14 OTTO ARNESON (page 53): Reside in Decorah, and have lived there 31 years. I worked in the First National Bank of Decorah for eight years; am personally acquainted with James H. Easton and know his signature. Am personally acquainted with T. W. Burdick and know his signature. As an employé of the First National Bank of Decorah I have handled Records A and B of that bank, and have written in B some. I have seen Mr. Easton refer to these books and handle them.

* * * * * * *

(Page 57:) Q. You may examine the signature or name on the bottom of page 13, Record A, and state whose signature it is.

* * * * * * *

A. It is James H. Easton's.

Q. You may state whether or not these two books, Records
15 A and B, were among and part of the record books of the First National Bank of Decorah during the time you were working there?

* * * * * * *

A. They were.

* * * * * * *

The following-named witnesses testified to depositing money in the First National Bank of Deborah and receiving certificates of deposit therefor, and that no part of such deposit was paid prior to August 21, 1896. The names of the persons depositing and the date and amount of such deposits are and their certificates therefor are as follows:—

Name of depositor.	Date of deposit.	Amount.
Tollef Svenningsen	July 17, 1896	$2,040 00
W. P. McClaskey	July 3, 1896	1,000 00
Ammi Smith	June 1, 1896	350 00
Peter V. Holverson	July 11, 1896	700 00
Mrs. P. McCusker	July 17, 1896	25 00
Henry B. Deters	March 21, 1896	200 00
Sarah M. Larson	Dec. 4, 1895	175 00
Sarah M. Larson	May 16, 1896	300 00
Sarah M. Larson	June 15, 1896	11 00
Elizabeth Wendling	June 4, 1896	1,000 00
16 Elizabeth Wendling	July 17, 1896	3,000 00
Geo. W. Yarwood	June 6, 1896	100 00
Geo. W. Yarwood	Aug. 8, 1896	200 00
M. H. Tveter	Aug. 15, 1896	200 00
Ole O. Hakaason	July 8, 1896	80 00
Ole O. Tolpaug	June 6, 1896	330 00
John O. Tveter	Feb. 28, 1896	100 00
Jas. B. Tillinghast	April 25, 1896	410 00
O. V. Wingard	Jan. 14, 1896	312 00
O. V. Wingard	Oct. 4, 1895	156 00
Jas. B. Tillinghast	Feb. 12, 1895	275 00
(This was paid Oct. 12, 1896.)		
Peter P. Feifer	Nov. 14, 1895	270 40
" "	May 8, 1896	104 21
" "	April 6, 1896	85 14
" "	March 26, 1896	62 04
" "	Jan. 20, 1896	191 60
" "	Dec. 4, 1895	90 55
" "	Jan. 23, 1896	480 45
Joseph M. Lennon	Feb. 21, 1896	420 24
(Paid in full Aug. 22, 1896.)		
Nels Jorgeson	May 23, 1896	400 00
" "	May 23, 1896	2,000 00
Andrew H. Vigenes	Dec. 24, 1895	75 00
B. J. Given	March 14, 1896	225 00

* * * I have made an examination of the books of the bank to ascertain the names of persons to whom it was indebted on August 21, 1896, on time certificates. I have also examined the books and prepared an itemized statement of individual deposits subject to check, demand certificates and part payments thereon, and time certificates of deposit, sundries credit, bills payable and bills rediscounted at the close of business August 21, 1896. I have made the computation carefully, and know the statement to be correct. Exhibit "42" contains all these matters.

17 Exhibit "42" is offered in evidence by plaintiff.

The entire assets of the bank as shown by its books and this exhibit on the morning of Aug. 21, 1896, were $368,249.32, and its total liabilities were $269,259.75.

I have made a transcript from the books of the bank showing its transactions of Aug. 21, 1896. It is Plaintiff's Exhibit "44" and is correct. On that day the bank received on deposit $100 from John French, for which it gave a time certificate of deposit to him. The total amount of business of the bank that day is

Amount received	$4,574.88
Amount paid out	4,556.16

This transcript is made from and the items are shown in General Cash Book 46, page 457, of August 21, 1896.

(Page 1431:) I have made a computation of the amount of bills receivable owing to the bank that were past due August 21, 1896; the amount was $162,279.05. In the year 1891 there was past due $1,858.65; at the close of the year 1892 there was past due $2,659.30; at the close of 1893 there was past due $8,347.14; at the close of 1894, there was past due $76,945; at the close of the year 1895 there was past due $120,520.07. From the end of the year 1895 to August 21, 1896, bills and notes matured to the amount of $41,758.98.

E. R. BAKER (page 157): Live in Chicago, formerly lived in Decorah, Iowa, for 26 years. I was employed in the First National Bank of Decorah first as messenger, afterwards as book-keeper, then teller, assistant cashier, and June, 1894, was appointed cashier in place of Capt. Gardner, deceased, who died May 20th, 1894, and was cashier until the bank suspended, November 10th, 1896. James H. Easton acted in the capacity of president of the bank during all this time; George Q. Gardner was cashier of the bank from 1884 until his death.

Directors' Minute Book A, is one of the books of the bank. I have seen the book there ever since I have been in the bank; at different times.

18 Plaintiff offers in evidence pages 7, 8, 9 and 10, Directors' Minute Book A, as follows:

Articles of association of the First National Bank of Decorah, entered into by and between the undersigned on this 30th day of April, 1864, for the purpose of organizing a banking association to carry on the business of banking under an act of Congress entitled "An act to provide a national currency, secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof," approved February 25, 1863.

First. The name and title of this association shall be the First National Bank of Decorah, Iowa.

Second. The place of business of this association shall be at Decorah, Winnesheik county, Iowa.

Third. The board of directors shall consist of five stockholders. The first meeting of stockholders for the election of directors shall be held at Decorah on the 30 day of April, 1864.

Fourth. The regular annual meeting of the stockholders for the election of directors shall be on the second Tuesday of January each year.

Fifth. The capital stock of this association shall be fifty thousand dollars, but the same may be increased from time to time, subject to the limitations of the act, to any sum not exceeding one hundred and fifty thousand dollars. The shares of stock to be one hundred dollars each.

Sixth. The board of directors shall elect one of their number to be president, and they shall have the power to appoint a cashier and such other officers and clerks as may be required to transact the business of the association. The board of directors shall by their by-laws specify by what officers of the association or committee of the board the banking business of the association shall be transacted; to make all the by-laws that may be required to regu-
19 late the business of the association, and generally to do and perform all acts which are proper to be done by a board of directors.

Witness our hands this thirtieth day of April, 1864:

JAMES H. EASTON.
A. BRADISH.
ARCHIBALD HOWELL.
C. E. DICKERMAN.
S. W. MATTESON.
GEORGE BOLLES.
WM. C. ADSIT.
JAMES HUNTER.
C. N GODDARD.
C. J. HENRY.
WM. H. BURFURD.

Acknowledged by each of these before

E. M. FARNSWORTH,
Notary Public.

Of the foregoing signatures I know those of James H. Easton, A. Bradish, Archibald Howell, C. E. Dickerman, S. W. Matteson, James

Hunter, C. N. Goddard, and C. J. Henry to be the genuine signatures of said parties respectively.

Plaintiff also offers and reads pages 11 and 12 of said book as follows:

Organization Certificate of the First National Bank of Decorah, Iowa.

We, whose names are specified in article four of this certificate have associated ourselves for the purpose of transacting the business of banking under an act of Congress entitled "An act to provide a national currency, secured by a pledge of United States stocks, and provide for the circulation and redemption thereof" approved February 25, 1863.

First. The name and title of this association shall be the First National Bank of Decorah, Iowa.

Second. The said association shall be located in the village of Decorah, Winnesheik county, Iowa, where its operations of discount and deposit shall be carried on.

Third. The capital stock of said association shall be fifty thousand dollars, divided into five hundred shares of one hundred dollars each. This association shall commence business on the first day of July, 1864.

Fourth. The name and residence of each of the shareholders of this association, with the number of shares held by each, are as follows:

20	James H. Easton	Decorah	425
	Alonzo Bradish	"	10
	Archibald Howell	"	10
	S. W. Matteson	"	10
	C. E. Dickerman	"	10
	George Bolles	"	10
	James Hunter	"	5
	Wm. C. Adsit	"	5
	Wm. H. Burfurd	"	5
	C. N. Goddard	"	5
	Charles J. Henry	"	5

Fifth. The said association is to commence on the ——

Sixth. This certificate is made in order that we may avail ourselves of the advantages of the aforesaid act.

Witness our hands and seals this ——

Signed by each of the above-named parties.

(Page 223:) The First National Bank of Decorah kept a book called a General Daily Balance Book No. 2, which was in use by the bank on August 21, 1896, and prior thereto, and up to the time of the suspension of the bank in November, 1896; that is one of the regular books of the bank. It is a book of original entry so far as the balances are concerned, which are extended each day from the cash book. This book was made up in the bank under my direction and that of the president and officers of the bank. These entries

under the date of August 1896 were made in the usual course of the business of the bank.

Q. State in a general way what the usual course of the business of the bank was and as to the method of keeping its books; tell what books were kept and what they were for?

A. We kept a general cash book, in which the general transactions were entered; also a deposit book in which we entered the deposits and checks each day; also a general ledger, in
21 which we posted all the items from the general cash book; a general balance book and an individual balance book. This book designated general daily balance book shows at the close of business each day the condition of the bank as it appears from its book. This General Balance Book No. 2 shows the balances of the various other books, and the resources and liabilities of the bank on August 21, 1896. The book-keeper would take from the entries in the general cash book the various items making up the day's business, and making the proper additions and deductions from the various accounts would extend the balance into the general balance book, and this balance book would show the amount in dollars and cents of outstanding certificates on a given date. It also shows the amount of other liabilities of the bank, such as bills payable, bills rediscounted; it also shows the assets of the bank, such as bills receivable, and other assets whatever they may be.

Cross-examination.

It shows the general balances of the different accounts of the bank upon the different days indicated, under proper headings; and these balances are made up from the daily transactions of that day. These are the original entries of the balances as they appear here. This balance book shows the assets and liabilities of the bank. The entries under the head of "Resources" show the assets of the bank, and those under the head of "Liabilities" show the bank's liabilities.

Redirect examination:

The balances which were carried over to August 21, 1896, are those with which the bank closed business on August 20.

Q. Will you please read to the jury the various items showing the resources and liabilities of the First National Bank of Decorah, Iowa, as appears from this Daily Balance Book No. 2 at the close of business August 21, 1896?

A. I will. They are as follows:

22 *Resources.*

Bills receivable	$240,714 29
Real estate and mortgages owned	10,244 15
Overdrafts	1,723 11
5 per cent. redemption fund	900 00
Stocks and bonds	61,905 00
Winnesheik County warrants	103 65
Banking-house	16,000 00

Cash on hand		16,524 20
Due from reserve agents, American Exchange National Bank, New York, (special)		2,430 00
First National Bank, Chicago		414 30
Commercial National Bank, New York		872 52
Merchants' National Bank, St. Paul		139 34
United States bonds, with Treasurer of the United States, to secure circulation		20,000 00
		$371,970 56

From the total of the above should be deducted the following items:

Overdraft, American Exchange National Bank, New York	$65 37	
Part payment bills receivable	3,456 53	
		3,521 90
Total amounts		$368,448 66

Liabilities.

Individual deposits subject to check	$38,288 68	
Demand certificates of deposit	15,361 11	
Time certificates of deposit	176,264 68	
Sundries credit	3,681 61	
Bills payable	16,000 00	
Bills rediscounted	2,500 00	
Circulation	18,000 00	
	$270,096 08	
Deduct part payment on certificates	733 70	
		269,232 38
Assets over liabilities as shown by books		$99,215 28

23 The Government bonds are deposited with the Treasurer of the United States to secure the circulation of the bank, and are held by him in trust for the bank. The circulation is the national bank notes furnished by the Government to the bank to circulate as money.

Q. You may state what this item $240,714.29, bills receivable, is made up of?

A. Notes, for the most part, and discounts. This items of "stocks and bonds" among the assets were bonds of various corporations purchased by the bank, also stock of various corporations. This item among the liabilities of individual deposits subject to check was accounts of depositors subject to check; there were perhaps a hundred or more of depositors whose balances made up this total. This item of demand certificates, $15,361.11, were deposits for which we had issued certificates payable on demand. The item of time certificates, $176,264.68, represented deposits made for a fixed time, six

months or a year as the case might be. I should say there were over three hundred persons holding time certificates making up this total. The item, sundries credit, were temporary credits to different parties, placed there for convenience, which were liable to be drawn at any time. The bank was a borrower of money during the year 1896 up to August.

Q. About how much did it use, and for how long was it borrowed during this time?

A. I can only speak from recollection; probably $20,000, perhaps more, sometimes less; the amount varied at different times. As a rule they were short loans; occasionally ran a few months. The capital of the bank is used in its business and is included in the resources. The resources of the bank as above given include the amount represented by the capital stock. Under the national bank law a bank is required to lay aside a certain portion of
24 & 25 its profits in a fund known as the "surplus fund," and the undivided profits and surplus fund on August 21, 1896, were represented in these assets which I have named. The resources of the bank at the opening of business August 21, 1896, as shown by the books were..... $368,448.66
And its liabilities at the same time as shown by its books were..... $269,467.37

This includes an error in part payment of a certificate of deposit not entered on books. All of the transactions of the bank and all of its property are represented on its books. These certificates here (shown in the above table) are included in one or the other of the items of demand certificates or time certificates of deposit. The limit of loans to individuals by the bank as allowed by law is ten per cent. of the capital stock; the capital stock of this bank was $75,000. Among the stockholders of the bank August 21, 1896, that I remember, were T. W. Burdick, George Q. Gardner, deceased, and James H. Easton. Mr. Easton was the largest stockholder of the bank during all of the time I was connected with it. He owns nearly two-thirds of the stock.

The State offers in evidence so much of Daily Balance Book No. 2, identified by the witness, Baker, as shows the assets and liabilities of the bank on August 21, 1896, heretofore read to the jury by Mr. Baker, and it is agreed that a transcript of the items referred to and read by the witness Baker may be made from the books offered, and be used in place of the book.

(Page 285:) It was customary for the bank to carry in cash 15 per cent. of its deposits; that was the requirement of the law, but it varied from this more or less. Among the assets of the bank on August 21, 1896, were $35,700 in bonds, and $7,100 of stocks of the Iowa and Minnesota Investment Co., and these appeared upon the books of the bank and continued among the assets of the bank until it closed.

* * * * * * *

26 & 27 These bonds appear upon the books of the bank by number, and were a part of its assets on August 21, 1896, and included in the items of "stocks and bonds" owned by the bank. The bank obtained these bonds from James H. Easton. It also owned five certificates of stock of the same company, aggregating $7,100 which was also a part of the bank's assets on August 21, and included in the items of stocks and bonds.

* * * * * * *

28 The book here marked "General Ledger F" is one of the books of the bank; it is posted from the general cash book. The books here marked "Cash Books 39, 42, 43, 44, 45 and 46" are cash books kept by the First National Bank of Decorah in the usual course of its business. The book marked "Discount Register 7" is also one of the books of the bank.

* * * * * * *

I have known Mr. Easton a great many years.

Q. What did Mr. Easton do in and about the bank during the years 1894, 1895 and 1896?

A. He was president and manager; he was there practically all the time except short trips he took away from Decorah, and

29–33 when at Decorah he was in the bank as manager thereof. When he was there no one else did anything, practically, in regard to the management of the bank.

* * * * * * *

34 I have known the First national bank, of which James H. Easton was president, and of its doing business there upwards of twenty-five years, and up to the time of the suspension of the bank in November 1896. The general character of the business conducted was receiving deposits, loaning money, selling drafts, and foreign exchange, and doing a general banking business; and it continued to conduct such business up to the time of its suspension, November 10, 1896. On August 21, 1896, and for several months before and after, and until the bank closed, I was at the counter a good part of the time; checked up the books every night, and looked after some of the bills. Mr. Easton was general manager of the business, had charge of all the loans and transactions which made up the bulk of the business of the bank. I can say further that I signed drafts and certificates as they were issued from day to day; Mr. Easton also did that from time to time.

* * * * * * *

35 (Page 838:) Pages 224, 225, 226, 227 and 228 of Directors' Minute Book B of the First National Bank are in my handwriting; that entry was made at the time of the transaction in the usual course of the business of the bank. The signature of James H. Easton thereto attached is in the handwriting of the defendant Easton.

The State offers these pages of the book in evidence. Objected to by defendant as incompetent, not the best of evidence. Overruled, and defendant excepts.

The pages are as follows: "Special meeting of the board of directors of the First National Bank of Decorah, held on Tuesday, March 17, 1896. The following directors were present: Henry Paine, B. Anundsen, T. W. Burdick, James H. Easton, E. R.
36 Baker; James H. Easton in the chair and E. R. Baker acting as secretary. Lease of the Freeport paper mill to Francis Hickman for one year from March 16, 1896, read and approved. The letter of the Comptroller of the Currency under date of March 9, 1896, relative to the report of the bank examiner made February 21, 1896, placed before the board for consideration and action and reply. A full reply to same, taking up each item in rotation, was signed by all the directors to be forwarded to the comptroller, a copy of which is retained on file.

"The following motion was made by T. W. Burdick, and adopted. Resolved that Fred S. Easton, cashier of the Black River national bank, be and is hereby authorized and requested to confer with Hon. Jas. H. Eckles, Comptroller of the Currency, regarding the subject of correspondence by the comptroller with the president of the First National Bank of Decorah; reference being made to the comptroller's office letter dated March 9, 1896.

"The following resolution was presented and unanimously adopted.

"Whereas, James H. Easton has conveyed by warranty deed, dated March 16, 1896, to the First National Bank of Decorah, certain real estate to secure the payment of his certain four promissory notes of $7,500 each, which were given to redeem and in substitution for certain stocks and bonds held by said bank, to wit: One hundred fifty shares of the Sault Ste. Marie Falls Water Co. stock, $15,000; and one hundred fifty shares Chicago Mining and Reduction Co. stock, $15,000; guaranteed by said Easton;

"Now, the said conveyances of said real estate are accepted by the bank on condition that upon payment *of* said company of said four notes aforesaid the real estate shall be reconveyed to said James H. Easton by said bank. The said bank will proceed to sell said real estate, or parts thereof, from time to time, as opportunity
37–39 offers, and apply the proceeds to the payment of said indebtedness. The list of lands and description are as follows:

Description.	Acres.	Estimated value.
* * * * * * *		

"And whereas, James H. Easton is liable as principal and guarantor to the First National Bank of Decorah on sundry other notes and bills, it is hereby ordered and agreed that his offer of a trust deed be accepted, conveying to this bank the north half of sec. 8, 98, 10, valued at $8,000, as collateral security for any of said liabilities. In case of need the said Easton be allowed to elect upon which and for which liability the said conveyance shall protect and apply."

* * * * * * *

40 The bonds of the Iowa and Minnesota Investment C
were turned into the bank to take the place of an indebte
ness of James H. Easton; that indebtedness originated at the time
and in the amounts as follows, to wit: May 6, 1892, $4,190.32; Fe
15, 1893, $1,692.90; May 19, 1893, $4,964.35; June 28, 1893, $5,901.64
June 28, 1893, $2,971.17; Sept. 14, 1893, $2,152.55; Nov. 10, 189
$1,915.34; Nov. 27, 1893, $2,050.47; April 30, 1894, $1,933.97; an
there is $10,000 more running back to June 25, 1884, making in a
$37,772.68.

* * * * * * *

(Page 1017:) There was no material change either way in th
condition of the bank from August 21, 1896, until it closed, excep
that the liabilities were reduced and there would be a correspondin
difference or reduction of the assets.

(Page 1175:) The assets of the bank decreased from Augu
21, 1896, to November 10, 1896, $21,338, and the decrease i
41 liabilities was $19,600. Practically all of the assets that wer
in the bank when it closed were there August 21, 1896.

Q. I call your attention to Cash Book 45; the entry on page 13
in regard to the $33,500, stocks and bonds of the Iowa and Minn
sota Investment Co. Now I ask you to state whether or not th
book shows that on the same date James H. Easton took out of th
bank certain notes which he was owing it, and also certain note
which other parties were owing to the bank, and which were amon
the assets of the bank at that time.

A. I was present in the bank at the time and Mr. Easton took ou
the notes referred to at page 134 of this cash book; that entry wa
made under his direction.

The plaintiff offers in evidence pages 134 and 135 of the cash boo
showing the transaction just testified to by the witness.

* * * * * * *

Witness reads from the book that stocks and bonds are charge
with Iowa and Minnesota Investment Co. stocks and bonds, tota
$33,500, and bills receivable with notes of James H. Easton fo
$7,500; that bills receivable were credited with notes of James H
Easton for $27,600, and of other parties about $13,100.

Q. You may state in round numbers what the transactio
amounted to.

* * * * * * *

A. About $40,000. (Page 1215:) I have made a computation
the liabilities of the bank which were matured on August 21, 189
the total is $67,743.61. The items making up the total liabiliti
of the bank due August 21, 1896, are as follows:

42 & 43	Demand certificates	$14,732.4
	Individual deposits subject to check	38,288.0
	Sundries credit	3,681.0
	Time certificates matured and not presented	11,040.9
	Total	$67,743.0

The available cash and exchange on hand at that time was $20,380.37.

(Page 1402:) Prior to Capt. Gardner's death my best recollection is that Mr. Easton was absent from the bank from a third to a half of the time. When he was at home he was in the bank all the time, and had more or less to say about the business of the bank; looked after the reports to the comptroller and things of that sort. The total indebtedness of Geo. Q. Gardner to the bank at the time of his death, including his direct obligations and paper on which he was liable as a member of the firm and guarantor, amounted to $96,829.17. $30,000 of that was paid after his death from life-insurance money, and I think a small item of $200 or $300, besides. Aside from that no other portion of that indebtedness has been paid up to this time. There were two notes taken up by some real estate in Howard county, I think; they amount to $4,815, and that real estate was a part of the assets of the bank August 21, 1896.

Cross-examination:

This $4,815 in notes was not a part of the assets during the year 1896, but the real estate taken for it was. The deed of this land was taken before Capt. Gardner's death but it was not entered upon the books until afterwards. This $96,000 of Gardner's indebtedness was besides this $4,815.

* * * * * * *

44 Prior to Gardner's death, when Easton was absent he was in California part of the time; other times in the East, and in Duluth and other places. His health was quite poor. His daughter was also sick and died in New York State; Mr. Easton was there at the time of her death, and was absent some weeks; I can't say any nearer than that. In the spring of 1894 prior to Gardner's death he was in Minneapolis and Duluth and was gone for some weeks; he was not at home at the time of Gardner's death. I did not know of Gardner's being sick at all prior to his death. He died in the bank building; I can't say what time of the day; he was found there early in the morning, one Sunday morning; he was in in the bank doing business on Saturday, and he acted on the part of the bank in taking these obligations that I have just detailed upon which he was liable. He was cashier of the bank and had been for about ten years. For the $30,000 of life insurance there was taken up of his notes, and I presume surrendered to him, note of Wm. Kennedy, bank No. 28485, amount $5,000; note of John Frank, bank No. 28486, amount $5,000, and his own notes aggregating $30,250. The reports of the condition of the bank were made to the Comptroller of the Currency five times a year, on the call of the comptroller. The bank

45–57 examiners used to examine the bank for the last two years twice a year, and prior to that once. He examines the assets of the bank in detail, makes a report to the comptroller as to the assets and liabilities at the close of business on a certain day. He also examines some of the books of the bank. The reserve agents before making any loans to their country correspondents

under the law require a resolution by the board of directors, authorizing the officers of the bank to make such loans, and in compliance with their instructions we passed that resolution at a meeting of the board. I have been engaged in the banking business over twenty years. It is quite customary for banks to borrow money at certain seasons of the year. It is very largely done by most country banks at certain seasons of the year. The custom of the First National Bank of Decorah was that it aimed to keep its legal reserve up to the legal requirements, but sometimes it went below and sometimes above; it varied, and that variation is in accordance with the business of the bank from day to day. I continued to work in the bank from August 21, 1896, up to the time it suspended. It never refused to pay any of its obligations that were matured when presented up to that time, Nov. 10, 1896.

* * * * * * *

58 W. H. KLEMME (page 670): Live in Ridgeway; lumber merchant. Have known James H. Easton and the First national bank 25 years. I had some money on deposit in the bank on August 21, 1896; I had a conversation with Easton about it after the bank closed about a month. I went to see him relative to some transactions of transferring some of his property in Winnesheik county; the matter didn't look quite straight to me and I wanted some explanation of Mr. Easton relative to his home and some lands in Winnesheik county that were deeded in 1893 or 1894. I spoke to him about this and asked him to explain, and he said — could explain that very easily; that prior to 1893 they had a good deal of money in the bank; I think he said $200,000 or $250,000, on which they were paying interest; that it was impossible to make loans to amount to anything in Decorah, and that they had to go somewhere else to use the money; then he spoke about Superior and the Sault, and Minneapolis and St. Paul, and I think Des Moines; also about some pine lands that they had bought amounting to $60,000 or $65,000, that was burned over by fire which damaged it entirely. Also that George Q. Gardner, while cashier of the bank, made investments that turned out bad; as result of this and of the hard times they couldn't realize upon this property, and the result was that the bank was in bad shape; that was the words he used. Mr. Easton wanted to hold up the bank and do what he could for it, and he went and deeded some of this property to his brother with the understanding that he was not to put those deeds on record, because Mr. Easton expected some day that the bank would get on its feet again and the deeds would never be recorded. He said they were paying four per cent. interest on deposits to the depositors as I understood him.

59 Cross-examination:

(Page 676:) At this time I had the conversation with Mr. Easton; it was at his house, he was up around the house but I think was complaining of being sick. He didn't say where the pine land was, nor the amount of it, the number of acres, nothing of the kind.

* * * * * * *

60&61 W. H. DENT recalled:

* * * * * * *

62 (Page 1262:) I have been engaged in the banking business since 1875; and from 1883 to November, 1895, was president of the Le Mars national bank, in this State. Am familiar with the banking business, private and national. As receiver of the First National Bank of Decorah, I came into possession of its books, and these books here which have been identified by the witnesses, Arneson and others, are the books of that bank. After I took possession of the bank I examined the books to see what the assets were; I examined the papers and assets, and all the books of the bank, such as teller's, cash books, balance books, ledger, register and all the books and papers connected with the bank; I have frequently examined these books that are here. I have examined them with a view of ascertaining the financial condition of the bank; also the various accounts appearing on the books; also the notes, securities and other assets—in fact I have been examining them ever since I have had possession. Have made careful examinations of the books and assets of the bank on August 21, 1896, and afterwards; I have made in-
63–69 quiries in regard to the value of each item of the assets, and have endeavored to examine the property and get information from people familiar with the property. I have been to Duluth and examined the Longview property; I didn't examine the property in Superior.

Q. What examination have you made to ascertain the financial responsibility of the various persons who were owing the bank?

A. I have endeavored to see each party, if I could; have written to them frequently; have inquired of different people about them; in many cases have gone to the court-house to see if they had any real estate and the condition of their property. I have done this as to all the parties who were owing the bank, except as to those who paid up promptly.

* * * * * * *

70 Q. You may state whether or not you made investigations into the financial standing of James H. Easton, the defendant?

A. Yes sir, I asked Mr. Easton himself if he was able to liquidate his debt at the bank, or any part of it; also had an examination of the ten counties of northwestern Iowa to see if he had any real estate in his name, and I made inquiries of others that I believed might know something about his affairs.

Q. What was the information you got from these sources as to whether or not he had any property?

Objected to by defendant as incompetent, hearsay.
Overruled, and the defendant excepts.

A. He had no property.

Q. What did Mr. Easton himself tell you?

A. He stated he had no property whatever; was absolutely without property, living upon charity.

—. You may state from the investigations you made and inquiries made and statements made to you by defendant, whether or not claims of several thousand dollars could be made against James H. Easton August 21, 1896, by execution or otherwise?

Objected to by defendant as incompetent, the witness is not competent, he states no facts upon which he can state an opinion; and hearsay.

Overruled, and the defendant excepts.

A. He was absolutely execution-proof August 21, 1896.

I found among the assets of the bank four notes of $7,500 each of James H. Easton, secured by a mortgage upon the real estate in Howard county and a lot in Bozeman, Mont. I secured abstracts of title and interviewed several real-estate men to ascertain the
71–75 value of this security, and discussed the matter thoroughly with Mr. Easton. I effected a compromise of a part of these claims and took an absolute title to the land from Mr. Easton; I compromised three of the $7,500 notes, aggregating $22,500; then I compromised three other notes aggregating $7,500, making a total of $30,000; and one of the four notes that you first mentioned is still in contest in the district court in Howard county between myself and James H. Easton and others.

* * * * * * *

76 & 77 Q. You may state if you know what the condition of the First National Bank of Decorah was on August 21, 1896, as to being solvent or insolvent.

* * * * * * *

A. It was insolvent on August 21, 1896.

* * * * * * *

78 I have paid three dividends to creditors of the First National Bank of Decorah since I took possession; one of twenty and two of ten per cent. each. The last dividend was paid in June, 1898; up to that time I had collected about
79 & 80 $95,000 in round numbers of the assets, and up to the present time something over $100,000. The remaining value of the assets would be about $175,000 in round numbers; I mean face value of all, good and bad. The face value of the assets at the time I took possession was about $329,543; the total amount collected by the receiver up to the middle of February 1899 was $103,107, from which should be deducted acquired assets such as premiums, interest, etc., $18,148, leaving a balance of $84,559. This balance deducted from the total sum of the assets at the date of suspension leaves a balance of $244,584. This is the balance that might be shown from the books at that date; offsets and losses deducted, $59,940; this will leave the face value of the assets at $184,644. Now I will give you another explanation of the remaining assets as follows. Bills receivable on hand, face value, $130,534; other assets, face value, $54,110.

* * * * * * *

81 *Stipulation.*

(Page 1012:) It is agreed by the parties that the books purporting to be the books of the First National Bank of Decorah which have been identified upon the trial by the witness, are the books of the First National Bank of Decorah and made in the ordinary
82-87 course of the business of said bank; that said books show a continuous course of dealings with persons generally, and that the charges and entries therein made were made at the time of the transactions therein entered; the entries in said books shall be considered as verified by the clerks who made them to the effect that they believe them to be just and true. This admission shall not apply to the directors' minute books, judgment dockets, nor the book identified by the witness Arneson as one of the private books of James H. Easton.

E. W. D. HOLWAY (page 1039): Age 46, reside in Decorah, have for 32 years; occupation banker. Have been employed in the Winnesheik County bank for 28 years, and am at present one of the partners of said bank and its cashier. I am acquainted with the value of commercial paper, such as notes and mortgages; the members of the firm of the Winnesheik County bank own real estate; those members are C. J. Weiser and his two sisters and myself. I am acquainted with the value of real estate in Winnesheik county. We buy and sell notes at the Winnesheik County bank. Have known James H. Easton 25 or 30 years. I make it a practice to ascertain the financial condition of individuals that come into our bank to talk with me, and in a general way am acquainted with the financial standing of people in Winnesheik county.

* * * * * * *

88 I have examined the books of the First national bank since Aug. 21, 1896, to ascertain the financial condition of the bank. I cannot tell how many times. After the bank failed I went down with Gen. Stone (the bank examiner) and examined his list of assets and reported to the directors my opinion of the condition of the bank. I don't know how many times I have examined it since.

* * * * * * *

89 Q. State if you know what the condition of the First national bank was on August 21, 1896, as to being solvent or insolvent?

* * * * * * *

A. It was insolvent.

Q. (Page 1126:) From your examination how long had it continued to be so?

* * * * * * *

90 A. Several years.

* * * * * * *

91–102 The plaintiff offers in evidence each of the following letters as its Exhibits "226" to "239" inclusive. Each exhibit is shown the witness, E. R. Baker, and he says (beginning at page 1258) "The signature to each letter is that of James H. Easton."

* * * * * * *

103 (EXHIBIT "239")—CIRCULAR LETTER.

James H. Easton, president. N. H. Nelson, ass't cashier.

E. R. Baker, cashier.

The First National Bank of Decorah.

DECORAH, IOWA, *Nov.* 10, 1896.

DEAR SIRS: We are pained to inform you that owing to the steady shrinking of deposits and continued withdrawal of cash with inability to collect and realize anything upon our outstanding bills receivable and loans due us, we have been compelled to suspend payment. The bank is now in the hands of the national
104 bank examiner. In due course you will be advised of our intended future action.

Very respectfully, JAMES H. EASTON, *P't.*

Hon. T. W. Burdick, Sault Ste. Marie, Mich.:

The bank examiner (Gen'l Stone), finds our legal reserve only $42.00 short tonight. You understand that 'tis owing to my inability and the weakness of other stockholders, in meeting the assessment, which makes me throw up the sponge.

Frank Perry notifies me that suit will be brought against me on your $2,500 note due them, if not paid before the 15th inst. You can better understand my feelings and mental and physical condition than I can tell you.

J. H. E.

Plaintiff rests.

Defendant offered no testimony.

The foregoing is an abstract of all the testimony adduced upon the trial of said cause. The same is incorporated in a bill of exceptions duly signed by the judge and made part of the record of said cause.

At the close of the testimony the defendant filed a motion to direct a verdict in his favor and that he be discharged from custody upon the grounds:

1st. That the undisputed testimony affirmatively shows that the said First National Bank of Decorah, Iowa, was on August 21, 1896, a banking association, duly organized under and in pursuance of the laws of the United States, and that a certificate had been duly issued to said bank by the Controller of the Currency of the United States, in pursuance of the laws thereof, authorizing it to do a gen-

eral banking business, including the acceptance and receipt
105 of deposits at Decorah, in Winnesheik county, Iowa, as authorized by such laws of the United States, and that said bank, was on said August 21st, 1896, then doing such banking business at said place under and in pursuance of, and by virtue of such laws, and said certificate of the Controller of the Currency of the United States and not otherwise.

2nd. That this defendant was on said August 21st, 1896, the duly appointed and qualified president of said First National Bank of Decorah; and

3rd. That the deposit in question was accepted by and received in said bank by this defendant as such president of said bank, and as authorized by said laws of the United States and the said certificate of the Controller of Currency and not otherwise.

4th. That the laws of the United States under which said bank was so organized and permitted and licensed to do such banking business, authorized and permitted it by its officers and agents to accept and receive therein deposits of money in the usual and ordinary course of its business, and that the deposit in question was so accepted and received in and for said bank, by this defendant as its said president, and not otherwise; and

5th. That under such facts this court has no jurisdiction to inquire into, hear, try or determine the acts of this defendant in so accepting and receiving in and for said bank the said deposit, or to hear, try, or determine whether or not said bank was insolvent at the time said deposit was so received, and that such facts do not constitute any offence for which defendant can be tried or punished under the laws of this State.

6th. That the facts as charged in the indictment do not constitute any offence punishable by law.

7th. That the laws of Iowa under which said indictment is found, do not apply to national banks, organized under the laws of the United States, and doing business under the authority of, and as permitted by the laws of the United States.

106 8th. That the General Assembly of Iowa has no power or authority to enact any law that will in any manner effect or control the business or operation of national banks organized and doing business under and in pursuance of the laws of the United States and as authorized by such laws.

Which motion and each ground thereof was overruled by the court, and the defendant at the time duly excepted.

Instructions Asked by Defendant.

The defendant thereupon asked the court to instruct the jury as follows:

* * * * * * *

5th. If you find from the evidence that said First National Bank of Decorah, Iowa, was on August 21st, 1896, conducting its business in the usual and ordinary way, and was then able to meet, and did in fact meet and pay all its obligations presented for payment in the

usual and ordinary course of business, and was in such condition and so continued to meet and pay all its obligation-, as they were presented for payment up to the time it was taken possession of by the Comptroller of the Currency, then you will find that said bank was not insolvent on said August 21st, 1896, and your verdict must be for defendant.

107 8th. If the books, bills receivable and assets and liabilities of the bank were examined by the bank examiner and fully showed the condition of the bank, and reports of the assets and liabilities were made by the bank to the comptroller, and the bank was permitted by the comptroller to continue business and did so continue and was doing business in the ordinary and usual way at the time this deposit was received, then you can take that fact into consideration in determining whether the defendant honestly believed that the bank would be able to continue business and remain solvent.

* * * * * * *

15th. If you find from the evidence that the First National Bank of Decorah, Iowa, at and about August 21, 1896, was conducting its business in the usual and ordinary way and was able to meet, and did meet all its liabilities when due and presented to it in the usual and ordinary course of business and that afterwards by reason of indebtedness incurred by defendant for others, pressure for payment was made and litigation threatened, which resulted in the closing of the bank and a depreciation of the assets by forced liquidation, resulting in insolvency, it is your duty to find for the defendant.

* * * * * * *

108 Which instructions and each thereof were refused; and to such refusal the defendant at the time duly excepted, which refusal and exception is noted upon the margin of each of said instructions and signed by the judge.

Thereupon the court instructed the jury as follows:

Instructions Given.

GENTLEMEN OF THE JURY:

I.

The indictment in this case charges substantially that the defendant, James H. Easton, on or about the 21st of August, A. D. 1896, in the county of Winnesheik and State of Iowa, being then and there engaged in the banking business as an officer, to wit: president of the bank known and styled as "The First National Bank of Decorah," located and doing business as a bank of deposit and banking in the city of Decorah, in the county of Winnesheik and State of Iowa, did, as president of said bank as aforesaid, unlawfully, willfully, knowingly and feloniously permit, connive at, encourage, accept and receive for deposit in the said bank known as "The First National Bank of Decorah" as aforesaid a certain deposit in lawful paper money, a more particular description of which is to the grand jurors

unknown, of and in the sum of one hundred dollars of and from one John French, being then and there the property of the
109 said John French, and of the value of $100.00, the said bank being then and there insolvent, and the said James H. Easton, defendant aforesaid, then and there well knowing the said bank was insolvent, contrary to and in violation of the statute of the State of Iowa in such case made and provided.

II.

To this indictment the defendant pleads that he is not guilty of the offense charged in the indictment, and he is presumed to be innocent until he is proven guilty beyond a reasonable doubt, and the burden of proof rests upon the State to establish the guilt of the defendant beyond a reasonable doubt.

III.

Our statute upon which the indictment in this case is based provides: "That no bank, banking-house, exchange broker, deposit office, or firm, company, corporation, or party engaged in banking, broker, exchange, or deposit business, shall accept or receive on deposit with or without interest any moneys, bank bills, or notes, or United States Treasury notes, or currency, or other notes, bills or drafts circulating as money or currency, when such bank, banking-house, exchange broker or deposit office, firm or party, is insolvent." And that, "if any such bank, banking-house, exchange broker, or deposit office, firm, company, corporation, or party, shall receive or accept on deposit any such deposits as aforesaid, when insolvent, any officer, director, cashier, manager, member, party, or managing party thereof, knowing of such insolvency, who shall knowingly receive or accept, any such deposit as aforesaid, shall be guilty of a felony."

IV.

In order to convict the defendant of the crime charged in the indictment, it is necessary for the State to establish beyond all reasonable doubt each of the following facts:

1st. That on August 21st, 1896, there was located in the city of Decorah, county of Winnesheik, State of Iowa, a bank incor-
110 porated under the laws of the United States and doing a banking business as "The First National Bank of Decorah."

2d. That the defendant, James H. Easton, on said date was engaged in the banking business as an officer of said bank, namely:—as president thereof.

3d. That the said "The First National Bank of Decorah" was then and there insolvent.

4th. That the defendant James H. Easton then and there being an officer of said "The First National Bank of Decorah," namely: president thereof, and while so engaged in the banking business at the time and place aforesaid, knowing of such insolvency as aforesaid, did knowingly and unlawfully receive on deposit in "The

First National Bank of Decorah" from one John French, $100.00 in money, the property of said French.

V.

If you find from the evidence before you beyond a reasonable doubt that on August 21st, 1896, the defendant was engaged in the banking business at Decorah, Winnesheik county, Iowa, as an officer namely: as president of "The First National Bank of Decorah," and that said bank was incorporated and authorized to do business under the laws of the United States, and if you further find from said evidence beyond a reasonable doubt that said bank was then and there insolvent, and if you further find from said evidence beyond a reasonable doubt that the defendant was then and there an officer of said bank, namely: president thereof, and while so engaged in the banking business at the time and place aforesaid, knowing of said insolvency of said bank, did knowingly and unlawfully receive on deposit in said bank from one John French the sum of $100.00 in money, the property of said French, then you will convict the defendant, and if you do not so find you will acquit him.

VI.

It is necessary for the State to establish by the evidence beyond all reasonable doubt, that at the time the alleged deposit was
111 received by "The First National Bank of Decorah," that the said bank was insolvent; that such insolvency was then and there known to the defendant, and that he then and there being an officer of said bank, namely: the president thereof, knowingly and personally received the deposit of John French in question in the said bank with knowledge of such insolvency.

VII.

The statute on which the indictment in this case is based was enacted to protect depositors in banks and banking institutions, and to punish fraudulent banking.

The word "insolvent," in the ordinary sense, as applied to an individual, means inability to pay all just claims or debts.

So, also, a party who is unable to pay his debts according to the usages of the trade, or proceed in business without a general arrangement with his creditors, or by indulgence by way of extension of time of payment, is insolvent under our insolvent laws.

The word insolvent, as used in this statute and in the indictment herein, and applied to a bank, company, or a corporation engaged in the business of banking, means inability to meet liabilities in the usual course of business, and if the assets of a banking corporation are insufficient in value to pay the debts of such corporations, then such corporation is insolvent.

A bank or banking corporation engaged in the banking business is solvent, within the meaning of the statute, when it possesses assets of sufficient value to pay, within a reasonable time, all its

liabilities through its own agencies, and is insolvent when it does not possess assets of such value.

One of the questions for you to determine from the evidence is, whether the First National Bank of Decorah was insolvent on August 21, 1896. The funds of a bank are supposed to be ready at hand to meet the wants of its patrons, and of the commercial, trading and manufacturing communities in which they are located.

So, in determining this question you will consider all the
112 evidence before you relating thereto, the amount and character of the assets of the First National Bank of Decorah, Iowa, and the reasonable cash value thereof, the uncertainty, if any has been shown, of being able to realize on such assets in a reasonable time, a sufficient amount to meet the liabilities of said bank, the availability or want of availability of such assets, as carrying of debts upon which little or nothing can be realized except after long delays, investments in real estate which may take time to turn into current funds, any and all such circumstances, if any, appearing in evidence, will be considered by you, and if you find beyond a reasonable doubt that the assets of the First National Bank of Decorah at the time and place mentioned in the indictment, computing such assets at their reasonable cash value, without regard to cost, were insufficient in value to pay all the debts of said bank within a reasonable time, in the ordinary course of business, then you will find that the said bank was then and there insolvent.

VIII.

The capital and surplus of the bank are a part of its resources and should be considered by you as a part of its assets and not as a liability of the bank.

IX.

The defendant is charged with and is now on trial for accepting and receiving a deposit of $100.00 from one John French on August 21, 1896, as hereinbefore stated and for no other offense. The fact that other deposits in said bank were made by other persons can be considered by you only in determining the amount of the bank's liabilities or obligations at such time, and that the bank was doing business at and prior to receiving such deposit from John French and for no other purpose.

X.

The fact that the First National Bank of Decorah, Iowa, was closed by the Comptroller of the Currency of the United States on November 10, 1896, does not prove or tend to prove that said bank was insolvent on August 21, 1896, when the deposit in ques-
113 tion was received; and you will not consider such fact in determining whether or not said bank was solvent on August 21, 1896.

XI.

The amount collected by the receiver on the assets of the bank, in his efforts to liquidate and close it- affairs, is not the basis upon

which you will reach your conclusion as to the value of such assets on August 21, 1896. You will determine the fair and reasonable value of the assets and resources of the bank on August 21, 1896, from all the evidence in the case bearing upon that question.

XII.

If you believe from the evidence before you that property constituting assets, or security for assets of the bank located at a great distance, or in other States, had depreciated in value below that at which it was carried on the books of the bank, such facts alone are not sufficient to charge the defendant with a knowledge of the depreciated value of the property, but you will carefully consider all the evidence before you bearing upon such property, and defendant's means of knowledge of its value in determining whether he did, or did not know of such depreciation.

XIII.

Should you find from the evidence that the legal reserve of the First National Bank of Decorah, Iowa, was on August 21, 1896, less than fifteen per cent. of its deposits, that fact should not be considered by you in determining the solvency of said bank.

XIV.

Certain witnesses have been permitted to testify that in their opinion claims against certain of the debtors of the bank could not be collected by execution or otherwise from such debtors in Winnesheik county, Iowa, on August 21, 1896. You are instructed that such testimony does not prove nor tend to prove that claims could not have been collected from such debtors at place- where such debtors resided or did business or had property other than in said Winnesheik county. Nor is the opinion of such witness or witness- conclusive that such claims could not be collected from such
114 debtors; but you should carefully scrutinize and consider the facts stated by each of said witnesses, his opportunity for knowing the actual financial condition of each of said debtors about whom he testifies, upon which he bases such opinion, and give to the opinions only such weight as you believe them just and fairly entitled.

XV.

If you shall find from the evidence that any person owing the bank had no property subject to execution at a particular place or county not shown to be the place of their business or residence such fact raises no presumption of the insolvency of such person, nor that they did not have property subject to execution elsewhere.

XVI.

You are instructed that the claims of the First National Bank of Decorah, Iowa against the estates and heirs of S. W. Matteson and W. E. Akers respectively, were not completely barred on August 21,

1896, and you will not therefore consider such claims as worthless simply because they had not been filed as claims against such estates respectively in the probate court in Minnesota on such date, but will determine the value thereof from a consideration of all the evidence introduced upon the trial relating thereto.

XVII.

You are instructed not to consider for any purpose whatever the evidence of the witness, W. V. Baker, as to the market value of the two notes of F. S. Eames, but to consider the case the same as though said evidence had not been admitted upon that point.

XVIII.

The fact that the defendant has not testified in his own behalf in this case, must not be given any weight against him by you in your deliberations; and you must not consider the fact of his not so testifying as a circumstance against him or for any other purpose whatever in arriving at your verdict.

XIX.

In criminal causes, full and satisfactory proof is required; mere weight of evidence is not sufficient, unless it excludes all rea-
115 sonable doubt as to the guilt of the defendant. The proof of guilt must be inconsistent with any other rational supposition; it must be real and not captious; it must not be a forced or artificial doubt; it must, without being sought after, fairly and naturally arise in the mind, after comparing the whole evidence and deliberately considering the whole case. If, upon such consideration, your minds and consciences are not firmly and abidingly satisfied of the defendant's guilt, i-s moral certainty is not produced, if the judgment waivers and occillates, you should give the accused the benefit of the doubt thus arising and acquit him.

XX.

Your province, gentlemen, is to determine the facts in the case from the evidence before you, and reach a conclusion from such evidence under the instructions of the court as to the law applicable to the case.

XXI.

When you retire to consider your verdict, select one of your number as foreman, and when you have agreed upon your verdict write it out on a sheet of paper separate from the instructions, have it signed by your foreman and return into court with your verdict.

The form of your verdict will be: "We, the jury, find the defendant guilty." Or, "We, the jury, find the defendant not guilty."

A. N. HOBSON, *Judge.*

To each of which instructions the defendant at the time they were given duly excepted; which exception is duly noted upon the margin of each of said instructions and signed by the judge.

After the giving of such instructions the jury retired, and on t
6th day of April, A. D. 1899 that being the 28th day of the regul
March, 1899, term of said court, the jury returned into court
verdict of guilty, as follows, "We the jury find the defenda
guilty."

116 On the same day the defendant filed a motion in arrest
judgment, as follows:—

Comes now the defendant and moves the court that no judgme
be rendered against him on the verdict returned in said cause, a
for grounds therefor shows:—

* * * * * * *

2nd. That the indictment contains matter, which if true, cons
tutes a legal defense and bar to the prosecution.

* * * * * * *

5th. That the undisputed testimony affirmatively shows that t
said First National Bank of Decorah, Iowa, was on August 21
1896, a banking association, duly organized under and in pursuan
of the laws of the United States, and that a certificate had been du
issued to said bank by the Comptroller of the Currency of the Unit
States, in pursuance of the laws thereof, duly authorizing it to do
general banking business, including the accepting and receipt
deposits, at Decorah, in Winnesheik county, Iowa, as authorized b
such laws of the United States, that said bank was on said Augu
21st, 1896, then doing such banking business at said place und
and in pursuance of and by virtue of such laws, and said certifica
of the Comptroller of the Currency of the United States and n
otherwise.

6th. That said defendant was on said August 21st, 1896, the du
appointed and qualified president of said First National Bank
Decorah, Iowa; and

117 7th. That the deposit in question was accepted for and r
ceived in said bank by this defendant as such president
said bank, and as authorized by said laws of the United States an
the said certificate of the Comptroller of the Currency and not othe
wise.

8th. That the laws of the United States under which said ban
was so organized and permitted and licensed to do such bankin
business, authorized and permitted it by its officers and agents t
accept and receive therein deposits of money in the usual and ord
nary course of its business, and that the deposit in question was
accepted and received in and for said bank by this defendant as i
said president and not otherwise; and

9th. That under such facts this court has no jurisdiction to in
quire into, hear, try, or determine the act of this defendant in
accepting and receiving in and for said bank the said deposit;
to hear, try, or determine whether or not said bank was insolven
at the time said deposit was so received, and that such facts do no
constitute any offence for which defendant can be tried or punishe
under the laws of this State.

10th. That the facts as charged in the indictment do not constitute an offence punishable by law.

11th. That the law of Iowa under which said indictment is found does not apply to national banks, organized under the laws of the United States, and doing business under the authority of and as permitted by such laws of the United States.

12th. That the General Assembly of Iowa has no power or authority to enact any laws that will in any manner effect or control the business or operation of national banks organized and doing business under and in pursuance of the laws of the United States and as authorized by such laws.

13th. That upon the whole record no legal judgment can be pronounced against defendant.

118&119 Which motion and each ground thereof *was* on the same day overruled by the court, to which ruling the defendants at the time duly excepted.

The defendant thereupon filed a motion for a new trial, as follows:

The defendant moved the court to set aside the verdict *set* against him and grant a new trial for the reasons:—

1st. That said verdict is contrary to law, and the evidence adduced upon the trial.

2nd. The court erred in giving its instructions to the jury numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, and in the giving of each one of said instructions.

3rd. The court erred in refusing each of the instructions asked by defendant, viz:—those numbered 2, 3, 5, 8, 14, 15, 17, 18 and 19.

* * * * * * *

120 18th. The court erred in overruling defendant's motion to quash the indictment and in overruling each ground thereof.

19th. The court erred in overruling defendant's demurrer to the indictment and in overruling each ground thereof.

121 20th. The court erred in overruling defendant's motion to discharge the jury and direct the verdict for defendant and to release the defendant from custody made at the close of the evidence, and in overruling each ground of said motion.

* * * * * * *

122 Which motion and each ground thereof was overruled by the court; to which rulings and each thereof the defendant at the time duly excepted.

The court on said April 6, 1899, rendered judgment against the defendant as follows:

It appearing to the court that more than six hours have elapsed since the rendition of the verdict, judgment is entered upon
123 the verdict; it is ordered and adjudged by the court that the defendant is guilty of the offense charged in the indictment and that the defendant, James H. Easton, be imprisoned in the penetentiary of Iowa, at Anamosa, at hard labor, for the term of five

years, and that he pay the costs of prosecution; bail on appeal is fixed at $10,000.

To which judgment and each and every part thereof the defendant excepts. By consent of parties defendant is given until September 1, 1899, to settle and file bill of exceptions.

On April 6, 1899, the defendant served on the attorneys of record for the State at the time said judgment was rendered, and on the clerk of the district court of Fayette county, a notice of appeal from said judgment to the supreme court of Iowa.

The defendant also filed with said clerk, on said April 6, a bail bond on appeal in the sum of $10,000, conditioned as by law provided, with sureties; which bond and sureties were duly approved by said clerk.

The shorthand reporter's notes of the evidence and proceedings of the trial were filed with the clerk of said court on April 6, 1899, duly certified by the reporter and the judge of said court on said date, and made a part of the record of said cause; and on August 28, 1899, a bill of exceptions in which are incorporated the evidence and other proceedings had upon the trial, was signed by the judge and filed with the clerk, together with a transcript of the reporter's said shorthand notes of the evidence and proceedings of the trial, and all are duly made a part of the record of said cause.

I hereby certify that the foregoing is a correct and true abstract of the whole record of said cause.

H. T. REED,
Of Counsel for Appellant.

124 And now the appellant makes the following assignment of errors, viz., the court erred

* * * * * * *

Second. In overruling each of the following grounds of the second division of the motion to set aside the indictment, viz:

The 2nd. That the law of Iowa under which said indictment was found, in so far as it attempts to make the receipt and acceptance of deposits in and for national banks, their officers and agents, a crime, is contrary to and in violation of the Constitution and laws of the United States, and void.

The 3rd. That the court has no jurisdiction to inquire into, hear, try or determine the act of defendant alleged in the indictment, for that said act was done by defendant under and in pursuance of the laws of the United States; and that said indictment and all process thereunder are void.

The 4th. That said law of Iowa is not uniform in its operation; and it unlawfully discriminates against banks, their officers, and agents.

Third. In overruling each of the following grounds of the demurrer to the indictment, viz:

* * * * * * *

The 2nd. That it contains matters which if true would constitute a legal defense or bar to the prosecution.

* * * * * * *

125 The 5th. That it does not state facts constituting an offense.

* * * * * * *

The 7th. That defendant as president of the First National Bank of Decorah accepted and received a deposit in and for said bank.

The 8th. That the alleged acts of the defendant constituted no crime because the statute of Iowa prohibiting the receipt of deposits by banks or their officers when insolvent does not apply to national banks, but only to banks doing business under the authority of the laws of this State.

The 9th. That the court has no jurisdiction to inquire into, hear, try or determine the act of defendant in accepting said deposit in and for the First National Bank of Decorah, for that said act of defendant is expressly authorized and permitted by the laws of the United States under which said bank is organized and is doing business.

The 10th. That if said law or Iowa be construed or held to apply to national banks and their officers and agents, it is in violation of the Constitution and laws of the United States in

(*a.*) That it abridges the rights and privileges of said banks, their officers and agents, as given them by the laws of the United States;

(*b.*) That it unlawfully discriminates against said banks, their officers and agents;

(*c.*) That it is an attempt to regulate and control the
126–128 business of national banks, which is a matter within the exclusive control of the Congress of the United States and upon which it has legislated;

(*d.*) That it attempts to prohibit, and punish by fine and imprisonment, the accepting and receiving of deposits in and for national banks by their officers and agents, which said acts are expressly authorized and permitted by the laws of the United States.

The 11th. That said law of Iowa is void in that it is not uniform in its operation, and unlawfully discriminates against banks, their officers and agents.

* * * * * * *

129 Thirty-second. In overruling each of the following grounds of defendant's motion to direct a verdict of acquittal, and discharge him from custody, viz: the 1st, the 2nd, the 3d, the 4th, the 5th, the 6th, the 7th, and the 8th. Appellant's Abstract, page 104.

Thirty-third. In refusing each of the following instructions asked by defendant, viz: the 2nd, the 3d, the 5th, the 8th, and the 14th. Appellant's Abstract, page 106.

Thirty-fourth. In giving each of the following paragraphs of the instructions given to the jury, viz: the 3d, the
130–223 4th, the 5th, and the 7th. Appellant's Abstract, page 108.

Thirty-fifth. In overruling each of the following grounds of the defendant's motion in arrest of judgment, viz: the 1st, the 2nd, the 3d, the 4th, the 5th, the 6th, the 7th, the 8th, the 9th, the 10th, the 11th, the 12th, and the 13th. Appellant's Abstract, page 116.

* * * * * * *

Thirty-seventh. In rendering judgment against the defendant. Appellant's Abstract, page 122.

* * * * * * *

224 And said cause was duly submitted to said supreme court at the January term, 1901 thereof on the foregoing record, and the said cause having been fully considered, said court did on the 12th day of April, 1901, file its written opinion (decision) the same being in the words and figures following, to wit:

In the Supreme Court of Iowa.

Filed April 12, 1901.

THE STATE OF IOWA
vs.
JAMES H. EASTON, Appellant.

From Fayette district court—Hon. A. N. Hobson, judge.

The defendant was charged by indictment with having, on the 21st day of August, 1896, while engaged in the banking business as president of the First National Bank of Decorah, at Decorah, Iowa, "unlawfully, wilfully, knowingly and feloniously permitted, connived at, encouraged, accepted and received, on and for deposit in said bank—a certain deposit in lawful paper money—of and in the sum of one hundred dollars, from one John French—and of the value of $100, the said bank being then and there insolvent, and the said James H. Easton the defendant aforesaid then and there well knowing that said bank was insolvent."

225 The defendant's motion to set aside the indictment and his demurrer to the indictment being overruled he plead not guilty and upon trial had a verdict of guilty was returned and judgment of imprisonment for five years and for costs rendered on the verdict. From this judgment the defendant appeals.

J. B. Powers, Dan Shea, Clements & Clements, and H. T. & C. W. Reed, for appellant.

Milton Remley, attorney general, H. P. Hancock, county attorney, E. P. Johnson and James H. Trewin, for appellee.

GIVEN, *C. J.:*

I. On and for a long time prior to August 26, 1896, the defendant was the president and general manager of the First National Bank of Decorah, a bank duly authorized to transact business at Decorah as a national bank under the laws of Congress.

On said 26th day of August, 1896, the defendant received from

John French on deposit in said bank $100 in money, for which he executed to Mr. French a certificate of deposit payable six months after date with interest at 4 per cent. "No interest after maturity."

The bank was then open and transacting business in the usual manner and continued to do so until about Nov. 10, 1896, when it was found to be insolvent and was put into the hands of a receiver.

While the question of the insolvency of the bank and of defendant's knowledge on that subject at the time this deposit was received are in issue, the jury was fully warranted in finding that the
226 bank was then insolvent and that the defendant knew that fact when he received the deposit. The extent of the liabilities of the bank, the character of its assets including a large liability against the defendant and defendant's active control and management of the bank, leave no room for debate on these issues.

II. Appellant's counsel present two propositions as follows.

"First. Does the statute of Iowa prohibiting banks or their officers or agents, from accepting and receiving deposits when such banks are insolvent, appiy to national banks organized and doing business under and in pursuance of the laws of the United States.

Second. If sections 1884 and 1885 of the Code be held to apply to national as well as State and private banks or bankers, then are they valid in so far as they apply to national banks organized and conducting business under the laws of Congress."

Section 1884, chapter 12, title 9 of the Code provides that "no bank, banking-house, exchange broker, deposit office, firm, company, or corporation doing a banking—or deposit business shall, when insolvent, accept or receive on deposit—any money bank bills, United States Treasury notes, or currency" &c.

Section 1885 provides as follows.

"If any such bank, banking-house, exchange broker, deposit office, firm, company, corporation or person shall receive or accept on deposit any such deposits, as aforesaid, when insolvent any owner, officer, director, cashier, manager; member or person knowing of such insolvency, who shall knowingly receive or accept, be accessory, or permit, or connive at receiving or accepting on deposit
227 therein, or thereby, any such deposits, or renew any certificate of deposit, as aforesaid, shall be guilty of a felony," &c.

Chapter 10 of said title 9 provides for the organization of savings banks, chapter 11 for the organization of State banks, and chapter 12, in addition to said sections 1884 and 1885, provides how such banks shall be managed and controlled.

Appellant insists that said sections 1884 and 1885 only apply to the banks provided for in said title 9.

The language of said sections included many other than savings and State banks and the construction contended for would exempt all these others from the prohibitions and penalties of said sections, which would leave the public unprotected as against such frauds by brokers, private bankers and others than savings and State banks that conduct a deposit business. These sections were originally enacted as chapter 153 Laws of the 18 G. A. and re-enacted in the code with slight changes as a part of said chapter 12. They

might more properly have been placed in the criminal statutes, but the fact of their re-enactment as part of chapter 12 does not warrant the restriction claimed. We are in no doubt but that the legislative intent is that said sections shall apply to all persons, corporations and associations receiving deposits of money. See State *vs.* Fields, 98 Iowa 748.

III. Appellant contends, in support of his second proposition, that said sections 1884 and 1885 of the Code of Iowa are invalid as to national banks, in other words, that they do not apply to national banks. The argument is that under the laws of Congress such banks are authorized to receive deposits and that, "where an act is authorized to be done by a law of the United States,
228 such act is thereby withdrawn from the operation of the criminal laws of the State, unless otherwise expressly provided by Congress, and that the performance of such act in pursuance of and as authorized by such law of the United States cannot be punished as an offense against any law of the State."

This statement of the law is in substantial accord with the authorities and the inquiry is whether the defendant was authorized by the laws of Congress to do the act of which he has been convicted.

This inquiry, we think, is directly answered in State *vs.* Fields, *supra*. We understand appellant's counsel to concede that that case is against their contention but they insist that it is against the weight of authorities, especially certain cases decided since that opinion was rendered; namely, State *vs.* Thomas, 173 U. S. 276 and *In re* Wait, 81 Fed. Rep., 359.

We do not find that this precise question has ever been passed upon by the Supreme Court of the United States, the only tribunal that may render a final determination of it. In the absence of such a decision, we follow the law as announced in State *vs.* Field, without reviewing the authorities and reasons upon which it is based.

IV. One ground of defendant's motion to set aside the indictment was that Thomas Rice was examined before the grand jury without being sworn as required by law.

Mr. Rice was foreman of the grand jury, he was sworn by one of the jurors and testified only that the defendant had been president of the bank for many years. There has been no dispute as to this fact at any time and we fail to see wherein the defendant was prejudiced by reason of Mr. Rice's not being sworn as provided in sections 5254, 5255 and 5260 of the Code.

229 This is not a ground for setting aside an indictment. Code sec. 5319. The grounds prescribed in that section are exclusive of others. State *vs.* Boughman, Iowa 82 N. W. Rep. 453. Another ground of said motion is that certain exhibits before the grand jury as evidence were not returned with the indictment as required by section 5280 of the Code.

The exhibits referred to are said certificate of deposit and a receipt given by defendant to one Grow. French and Grow testified concerning these documents but it does not appear that either document was before the grand jury. There was no error in overruling the motion on either of these grounds.

V. A ground of demurrer to the indictment was, that it is indefinite and uncertain and does not charge any offense with the required certainty.

It is argued that the indictment fails to show whether the bank was a corporation, partnership or name under which an individual was doing business.

The indictment charges that defendant was president of the bank known as the First National Bank of Decorah. "Construed in their usual acceptation in common language" these words of the indictment show that this was an incorporated national bank. Code sec. 5287.

As we construe said sections 1884 and 1885 the defendant's guilt does not depend upon the character of the organization of the bank. Another ground of the demurrer was that the indictment charges two offenses, namely, the permitting, conniving at and encouraging the receipt and acceptance of the deposit and also receiving the same.

To receive or accept a deposit knowing the bank to be in-
230 solvent is an offense, and to be accessory or permit or connive at receiving, or accepting, a deposit by another, knowing the bank to be insolvent is also an offense.

The indictment charges a receiving by the defendant and what is said as to his permitting, conniving at and encouraging the deposit is not that it be given to another but to himself.

The indictment does not charge two offenses for that it does not charge that defendant permitted, connived at or encouraged the giving of the deposit to another. There was no error in overruling the demurrer on these grounds.

VI. The court admitted in evidence, over defendant's objection, books of the bank, as bearing upon the question of insolvency and the defendant's knowledge thereof.

Defendant insists that these were not books of account or of original entries and therefore not admissible. They were not admitted as books of account and were not offered as such. They were books kept under the supervision of the defendant to show the condition of the bank and the entries therein were accessible to and known by him, therefore, they were admissible not only to show the condition of the bank but also the defendant's knowledge as to its condition.

The authority cited as to the rule applicable to books of account are not in point.

It is also contended that the court erred in admitting the evidence of the receiver and others as to the value of certain notes held by the bank. The condition of the bank depends upon the val-e of its assets and there was no better way of proving the value of these notes.

We find no error in the admission of evidence.

231 VII. Appellant's remaining contention is that the court erred in refusing certain of the instructions asked and in giving the sixteenth paragraph of the charge.

In so far as those asked were correct they were fully covered by

those given. Said 16th instruction relates to a claim held by the bank and was really favorable to the defendant.

We do not find any error in the giving or refusing instructions.

It follows from the conclusions we have reached that the judgment of the district court must be affirmed.

232 And on the same day said supreme court rendered a final judgment in said cause, the same being duly entered of record and is as follows:

"THE STATE OF IOWA
vs.
JAMES H. EASTON, Appellant. } Appeal from Fayette District Court.

In this cause, the court being fully advised in the premises file their written opinion affirming the judgment of the district court.

It is therefore considered by the court that the judgment of the court below, be, and it is hereby affirmed, and that a writ of *procedendo* issue accordingly.

It is further considered by the court that the appellant pay the costs of this appeal, taxed at $148.65, and that execution issue therefor."

232½ And afterwards there was filed in the office of the clerk of said court a petition for writ of error, writ, bond, citation and assignment of errors, and the same are hereto attached in original form as a part of the return to said writ of error, and true and correct copies thereof have been made and the same are lodged in said clerk's office.

233 Filed Apr. 16, 1901. C. T. Jones, Clerk Supreme Court.

In the Supreme Court of the United States, October Term, 1901.

JAMES H. EASTON, Plaintiff in Error,
vs.
THE STATE IOWA, Defendant in Error. } Petition for Writ of Error to the Supreme Court of Iowa.

To the honorable the chief justice of the supreme court of Iowa:

The petition of James Henry Easton respectfully shows,

That on the 12th day of April A. D. 1901, the supreme court of the State of Iowa rendered final judgment against him in a suit pending in said court wherein The State of Iowa was plaintiff and the petitioner was defendant and appellant, affirming a judgment of the district court of said State in and for Fayette county, Iowa, in said suit while the same was pending in said district court, adjudging your petitioner guilty of the alleged crime of knowingly accepting and receiving, as president of a national bank duly organized under the laws of the United States, and located and doing business as such national bank under such laws in the city of Decorah, Winnesheik county, Iowa, a deposit of one hundred dollars in money in and for said national bank when the same was insolvent, and sen-

tencing your petitioner to imprisonment in the penitentiary of Iowa at Anamosa for the term or period of five years, at hard labor, and also adjudging that your petitioner pay the costs of said action, taxed at — dollars; all of which will more fully appear by reference to the record and proceedings in said cause in said supreme court of Iowa.

That said supreme court of Iowa is the highest court in said State in which a final judgment in said suit can be had, and the petitioner claims the right to remove said judgment of the supreme court of Iowa, and the records and proceedings in said suit, to the Supreme Court of the United States by writ of error, under
234 the provisions of the statute of the United States in that behalf provided, and more especially section 709 of the Revised Statutes thereof, because

First. There was drawn in question in said suit, both in the district court and in the supreme court of said State of Iowa, the validity of a law of the United States, to wit, the national bank act, and of an authority exercised by the petitioner under the United States, to wit., as authorized by said national bank act; and the decision of said supreme court of Iowa is against the validity of such law of the United States and the authority exercised by the petitioner under the United States, and in pursuance of said law of the United States.

Second. There was drawn in question in said suit, both in the district court and in the supreme court of said State of Iowa, the validity of a statute of the State of Iowa, to wit, sections 1884 and 1885 of the Code of Iowa, 1897, as applied to a national bank duly organized under the law of the United States, upon the ground that said statute of the State of Iowa is repugnant to the Constitution of the United States; and to a law of the United States, to wit, the national bank act; and the decision of said supreme court of Iowa is in favor of the validity of such statute of the State of Iowa.

Third. That in said suit, both in the district court and in the supreme court of said State of Iowa, the petitioner specially set up and claimed the right, privilege, and authority under a law of the United States, to wit, the national bank act, as an officer, to wit, the president of a national bank duly organized under such national bank act, to accept and receive in and for said bank, in the ordinary course of its business, deposits of money, one of which deposits, to wit, of one hundred dollars, so accepted and received by him, he is charged in such suit as having unlawfully accepted and received, because of the provisions of said section- 1884 and 1885 of the Code of Iowa, 1897; and the petitioner claimed immunity under the Constitution of the United States, and a law of the United States, to wit, said national bank act, from said law of Iowa for accepting and receiving said deposit of money as such president
235 and officer of such national bank; and the decision of said supreme court of Iowa is against the right, privilege, and immunity so set up and claimed by the petitioner.

All of which more fully appears by the record and proceedings in said suit, which are herewith submitted; and in which judgment,

record, and proceedings manifest error hath happened and doth appear, to the great damage and injury of the petitioner.

The petitioner, conceiving himself aggrieved by the judgment and decision of the supreme court of Iowa in said suit, files herewith an assignment of errors as claimed by him in such decision, and prays the allowance of a writ of error, returnable into the Supreme Court of the United States, to the end that such errors may be corrected, the judgment of said supreme court of Iowa reversed, and proper relief granted unto your petitioner; that proper orders be made as to all necessary process therefor; that the amount of bail or bond required of your petitioner, to operate as a supersedeas and stay of proceedings in said cause and as security for the costs and damages in the prosecution of said writ of error, be fixed as by law provided.

JAMES H. EASTON, *Petitioner*,
By H. T. & C. W. REED, *Attorneys*.

H. T. REED, *Of Counsel*.

Allowed, and bond to operate as supersedeas and stay of proceedings fixed at five hundred dollars, in addition to appearance bond already given in district court.

Dated at Des Moines, Iowa, this 16th day of April, A. D. 1901.

JOSIAH GIVEN,
Chief Justice of the Supreme Court of Iowa.

236 Filed Apr. 16, 1901. C. T. Jones, Clerk Supreme Court.

UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the judges of the supreme court of the ~~United States for the~~ State ~~district~~ of Iowa, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, at the January term, 1901, thereof, between the State of Iowa and James H. Easton wherein was drawn in question the validity of a statute of or authority exercised under the United States and the decision was against their validity, and wherein was drawn in question the validity of a statute of or authority exercised under said State on the ground of their being repugnant to the Constitution and laws of the United States and the decision was in favor of such their validity and wherein was drawn in question the construction of the clause of the Constitution and statute of the United States and the decision was against the title, right, privilege and exemption specially set up or claimed under such clause of the said Constitution and statute a manifest error has happened, to the great damage of the said James H. Easton as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be

therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the said record and proceedings aforesaid, at the city of Washington, D. C., and filed in the office of the clerk of the United States Supreme Court on or before the 16th day of May, 1901, to the end that the record and proceedings aforesaid being inspected, the United States Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 16th day of April in the year of our Lord one thousand nine hundred and one.

Issued at office in the city of Des Moines with the seal of the circuit court of the United States for the southern district of Iowa; dated as aforesaid.

[Seal U. S. Circuit Court, Southern District Iowa.]

EDWARD R. MANN,
Clerk Circuit Court United States, So. District of Iowa,
By —— ——, *Deputy.*

Allowed to operate as a supersedeas this 16th day of April, 1901.
JOSIAH GIVEN,
Chief Justice of the Supreme Court of Iowa.

237 Filed Apr. 16, 1901. C. T. Jones, Clerk Supreme Court.

Know all men by these presents: That we, James H. Easton, as principal, and John W. Sandusky and Grant M. Bigelow & Tim. Donovan of Chickasaw county Iowa as sureties, are held and firmly bound unto the State of Iowa in the full and just sum of five hundred dollars, to be paid to the said State of Iowa, its certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this sixteenth day of April in the year of our Lord one thousand nine hundred and one.

Whereas, lately, at a session of the supreme court of the State of Iowa, in a suit pending in said court between The State of Iowa as plaintiff, and the said James H. Easton as defendant, a final judgment was rendered against the said James H. Easton, affirming a judgment of the district court of Iowa in and for Fayette county, sentencing the said defendant to imprisonment in the penitentiary of Iowa at hard labor for the term or period of five years, and adjudging that he pay the costs of said action; and the said James H. Easton having obtained the allowance of a writ of error, and filed a copy thereof in the clerk's office of said supreme court of Iowa, to reverse the judgment in the aforesaid suit, and a citation directed to said State of Iowa citing and admonishing it to be and appear at the

Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such that if the said James H. Easton shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JAMES H. EASTON.
JOHN W. SANDUSKY.
GRANT M. BIGELOW.
TIM DONOVAN.

Sealed and delivered in the presence of—
CARL H. KENYON.
H. T. REED.

Bond Certificate.

STATE OF IOWA, } ss:
Chickasaw County, }

I, J. W. Redman clerk of the district court in and for Chickasaw county, Iowa, do hereby certify that J. W. Sandusky, Grant M. Bigelow and Tim Donovan whose names are affixed to the within bond of James H. Easton are freeholders in the State of Iowa, and if the said bond was presented to me I should cheerfully approve the same in the amount of fifteen thousand dollars or more.

Witness my hand and seal of the district court hereto attached, this 15th day of April 1901.

[Seal of the District Court of Chickasaw Co., Iowa.]

J. W. REDMAN,
Clerk District Court.

{ Ten cent United States internal-revenue stamp, canceled 4, 15, '01. J. W. R. }

238 & 239 STATE OF IOWA, } ss:
Chickasaw County, }

We, John W. Sandusky, Grant M. Bigelow & Tim. Donovan of Chickasaw county Iowa being each duly sworn, each for himself doth depose and say:

That he is a resident of the State of Iowa, is worth the sum of ten thousand dollars, and has property liable to execution in this State equal to the sum of ten thousand dollars.

JOHN W. SANDUSKY.
GRANT M. BIGELOW.
TIM DONOVAN.

Subscribed by John W. Sandusky, Grant M. Bigelow & Tim Donovan in my presence and by them severally sworn to before me this 15th day of April 1901.

[Seal of the District Court of Chickasaw Co., Iowa.]

J. W. REDMAN,
Clerk of District Court in and for Chickasaw County, Iowa.

The foregoing bond approved, the same to operate as a supersedeas, bail, and stay bond.

JOSIAH GIVEN,
Chief Justice of the Supreme Court of Iowa.

[Endorsed:] In the supreme court of Iowa. The State of Iowa vs. James H. Easton. Bond. H. T. Reed, attorney, Cresco, Iowa.

240 Filed Apr. 16, 1901. C. T. Jones, Clerk Supreme Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the State of Iowa, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, at Des Moines, in said State, wherein James H. Easton is plaintiff in error, and you are defendant in error to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and reversed, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Josiah Given, chief justice of the supreme court of the State of Iowa, this 16th day of April, in the year of our Lord one thousand nine hundred and one.

JOSIAH GIVEN,
Chief Justice of the Supreme Court of Iowa.

We hereby admit that the foregoing citation was legally served on us at Des Moines, Iowa this 16th day of April 1901.

LESLIE M. SHAW,
Governor of Iowa.
CHAS. W. MULLAN,
Attorney General of Iowa.

241 Filed Apr. 16, 1901. C. T. Jones, Clerk Supreme Court.

In the Supreme Court of the United States, October Term, 1901.

JAMES H. EASTON, Plaintiff in Error,
vs.
THE STATE OF IOWA, Defendant in Error. } Assignment of Errors.

The petitioner, James H. Easton, as plaintiff in error, against The State of Iowa, as defendant in error, in the petition for a writ of error to the supreme court of Iowa filed herewith says, that there is manifest error in the judgment and decision of the said supreme court of Iowa in the suit referred to in said petition in this:

That said supreme court of Iowa erred,

First. In holding that the petitioner in accepting and receiving

the deposit of money in and for the First National Bank of Decora Iowa, and as charged in the indictment in said suit, was subject and amenable to sections 1884 and 1885 of the Code of Iowa, 189 and subject to prosecution and conviction under said State statut in the courts of Iowa for so doing.

Second. In holding that the said State courts of Iowa have juri diction to inquire into, hear, try, or determine the question of th validity of an authority of the petitioner, as president of a nation bank organized under the laws of the United States, to wit, th national bank act, and doing business as such in the State of Iow to accept and receive a deposit of money in and for such bank; to determine the question of the validity or legality of the act of th petitioner in so doing.

Third. In holding that said sections 1884 and 1885 of the Cod of Iowa, 1897, are not repugnant to the Constitution of the Unite States, and to a law thereof, to wit, the national bank act, in so far they attempt to prohibit national banks, their officers and agent from accepting and receiving deposits of money in and for suc banks, and incurring an indebtedness for such banks, in th
242 ordinary course of their business, unless the same is done i compliance with such sections of the law of Iowa; and i holding the said sections valid as against such national banks, thei officers and agents, while engaged in the transaction of the ordinar business of such banks.

Fourth. In holding that an act done by the petitioner under th authority of the Constitution of the United States, and of a la thereof, to wit, the national bank act, and as expressly authorized b such law, to wit, the acceptance and receipt by him as president a national bank in Iowa of a deposit of money in and for said banl is a crime against the laws of the State of Iowa, and the petitione subject to prosecution and conviction in the courts of Iowa for doin such act which is so expressly authorized by such law of the Unite States.

Fifth. In holding that it was within the rightful power of the Stat of Iowa, by an act of its General Assembly, to make the act of th president or other officer of a national bank organized under th laws of the United States and doing business as such in the Stat of Iowa in the transaction of the ordinary business of such bank, crime, and to impose a penalty of fine or imprisonment upon such officer for the transaction of such business for such bank, unless the same be done in compliance with the laws of said State of Iowa.

Sixth. In denying to the petitioner the right, privilege, authority and immunity specially set up and claimed by him in said suit fo an act done and authority exercised by him under the United States, and the laws thereof, viz., the national bank act.

Seventh. In affirming the judgment of the district court of Iowa in and for Fayette county, adjudging the petitioner guilty of a viola tion of sections 1884 and 1885 of the Code of Iowa, 1897, and sentencing him to imprisonment in the penitentiary of Iowa therefor; because said sections cannot rightfully have any force or effect as against an act done by the petitioner under a law of the United

States, to wit, the national bank act, and as expressly authorized by such law.

Eighth. In holding that said sections 1884 and 1885 of the
243 Code of Iowa, 1897, are not repugnant to the Constitution of the United States; because they unjustly discriminate against national banks, their officers and agents, in transacting such business in Iowa, and make the incurring of a debt by such bank, in the ordinary course of its business and without any fraudulent intent, a crime or offense, and which would not be a crime or offense if incurred by other persons or corporations.

Wherefore, the petitioner James H. Easton prays that said judgments of the supreme court of Iowa and of the district court of Iowa in and for Fayette county be each reversed, annulled, and set aside, and that he be discharged and released from the effect thereof.

H. T. & C. W. REED,
Attorneys for Petitioner.

H. T. REED, *Of Counsel.*

244 STATE OF IOWA, *ss:*

I, C. T. Jones, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a full, true and correct transcript of the record and proceedings in the case of The State of Iowa against James H. Easton, lately tried and determined in said supreme court.

And I further certify that the petition for a writ of error the writ, bond, citation and assignment of errors are hereto attached in original form, true and correct copies thereof having been made and retained in my office, and this return is made in obedience to said writ of error.

In testimony whereof, witness my signature and official seal at Des Moines, Iowa, this 27th day of April, 1901.

[Seal of the Supreme Court of Iowa.]

C. T. JONES,
Clerk Supreme Court of Iowa.

245 *Statement of the Errors to be Relied upon by the Plaintiff in Error, and of the Parts of the Record in Support Thereof.*

In the Supreme Court of the United States, October Term, 1901.

JAMES H. EASTON, Plaintiff in Error,
vs.
THE STATE OF IOWA, Defendant in Error. } No. 658.

The plaintiff in error in the above-entitled cause states,

That he intends to rely upon assignments of errors Nos. 1 to 8 inclusive, together with the prayer for reversal, as filed by him in said cause.

That the following-named parts of the record are all that he deems necessary for the consideration thereof, and all that need be printed, viz.,

(The references to pages are to appellant's abstract of record in the supreme court of Iowa.)

1st. The caption, as prepared and filed by the clerk of the supreme court of Iowa.

2nd. The title page, or page 1, of appellant's abstract of record in the supreme court of Iowa.

3rd. The indictment, endorsement and presentation thereof, as appears upon the said

Title page, and lines 1 to 23 inclusive of page 2.

4th. The arraignment, as appears upon

Page 5, lines 4 to 7 inclusive.

5th. The second ground of the motion to set aside the indictment, the ruling thereon, and exception to such ruling, as appears upon

Page 5, lines 8 to 13 inclusive.

Page 6, all after line 2.

Page 7, lines 1 to 11 inclusive.

6th. The demurrer to the indictment, viz., the 2nd, 7th, 8th, 9th, 10th and 11th grounds thereof, the ruling thereon, and exception to such ruling, as appears upon

246 Page 7, lines 12, 13, 14, 17, and 18.

Page 8, all after line 2.

Page 9, all except the last two lines.

7th. Defendant's plea of not guilty, empanelling the jury, and plaintiff's testimony, as appears upon

Page 9, last two lines.

Page 10, lines 1 to 11 inclusive.

8th. Part of plaintiff's testimony beginning on page 10, viz., —.

9th. John French, as to deposit of money and certificate therefor, as appears upon

Page 10, lines 12 to 27 inclusive.

Page 11, lines 3 to 19 inclusive.

10th. Wm. H. Dent, and papers showing organization of the First National Bank of Decorah, Iowa, as appears upon

Page 12, all after line 3.

Page 13, all except the last line.

11th. Otto Arneson, identifying books of the bank, as appears upon

Page 13, last line.

Page 14, lines 1 to 8 inclusive, and lines 19, 20, 21, 33, and 34.

Page 15, lines 1, 2, 3, and 11.

12th. Witnesses testifying to deposits made in the First National Bank of Decorah, Iowa, as appears upon

Page 15, all after line 17.

Page 16, lines 1 to 25 inclusive.

13th. Otto Arneson recalled, as appears upon

Page 16, all after the parenthesis in line 26.

Page 17, lines 1 to 23 inclusive.

14th. E. R. Baker, identifying articles of association, and books of the First National Bank of Decorah, Iowa, showing its transactions, resources and liabilities, as appears upon

Page 17, all after line 23.

Pages 18 to 23 inclusive.
Page 24, all except last two words.
Page 26, lines 16 to 22 inclusive.
Page 28, lines 7 to 12 inclusive, and all after line 28.
Page 29, lines 1 and 2.
Page 34, all after the word "business" in line 3 down to and including line 18.
Page 35, all after line 19.
Page 36.
Page 37, lines 1 to 3 inclusive, and lines 19 to 26 inclusive.
Page 40, all after the parenthesis in line 12 down to and including line 20, and all after line 27.
247 Page 41, down to the word "objected" in line 16, and lines 20 to 27 inclusive and lines 31 to 35 inclusive.
Page 42, all preceding the period in the third line from the bottom.
Page 44, all after line 10.
Page 45, lines 1 to 20 inclusive.
15th. W. H. Klemme, as to conversation with the defendant Easton,
Page 58, all after line 3.
Page 59, lines 1 to 6 inclusive.
16th. Wm. H. Dent, recalled, as to condition of the bank,
Page 60, the first four words in line 17, being the words "W. H. Dent, recalled."
Page 62, all after line 15.
Page 63, lines 1 to 14 inclusive.
Page 70, all after line 2.
Page 71, down to and including the words "Easton and others" in line 8.
Page 76, lines 14, 15, 16, and 34.
Page 78, all after the parenthesis in line 30.
Page 79, lines 1 to 15 inclusive.
17th. Stipulation, as appears upon
Page 81, all after line 28.
Page 82, lines 1 to 9 inclusive.
18th. E. W. D. Holway, as to condition of the bank, as appears upon
Page 82, line 10, and down to and including the word "county" in line 23.
Page 88, after the word "value" in line 15, down to and including line 21.
Page 89, lines 23, 24, 25, 33, 34, and 35.
Page 90, line 8.
19th. Exhibits and letters written by Mr. Easton, as appear upon
Page 91, lines 26, 27, 28, and 29.
Page 103, all after line 23.
Page 104, lines 1 to 15 inclusive.
20th. Plaintiff rests; defendant offers no testimony; abstract of all the testimony; and bill of exceptions, as appear upon
Page 104, lines 16 to 24 inclusive.

21st. Motion to direct verdict in favor of the defendant, and ruling thereon, and exception to such ruling, as appears upon
Page 104, all after line 24.
Page 105, and
Page 106, lines 1 to 7 inclusive.
22nd. Instructions asked by defendant, as appears upon
Page 106, lines 8, 9, and 10, and all after line 23.
Page 107, lines 1 to 9 inclusive, and 18 to 27 inclusive.
23rd. Refusal of such instructions, and exceptions to such
248 refusal, as appears upon
Page 108, lines 11, 12, 13, and 14.
24th. Instructions given, and the exceptions thereto, as appear upon
Page 108, all after line 14.
Pages 109 to 114 inclusive.
Page 115, lines 1 to 27 inclusive.
25th. The verdict of the jury, as appears upon
Page 115, all after line 27.
26th. Motion in arrest of judgment, ruling thereon, and exceptions to such ruling, as appear upon
Page 116, lines 1 to 6 inclusive, lines 9 and 10, and all after line 17.
Page 117, and
Page 118, lines 1, 2, and 3.
27th. The motion for new trial, the ruling thereon, and the exceptions to such ruling, as appear upon
Page 118, lines 4 to 17 inclusive.
Page 120, the last four lines.
Page 121, the first four lines.
Page 122, lines 26, 27, and 28.
28th. The judgment against the defendant, and the exceptions thereto, as appears upon
Page 122, all after line 28.
Page 123, lines 1 to 8 inclusive.
29th. The appeal, bail on appeal, bill of exceptions, and abstract of the whole record, as appear upon
Page 123, all after line 8.
30th. The assignment of errors in the supreme court of Iowa, as appear upon
Page 124, lines 1 to 3 inclusive, lines 11 to 28 inclusive, and lines 31 and 32.
Page 125, line- 5 and 6, and all after line 10.
Page 126, down to and including the word "agents" in line 10.
Page 129, all after line 24.
Page 130, lines 1 to 6 inclusive, and lines 14 and 15.
31st. The opinion (decision) of the supreme court of Iowa in said cause.
32nd. The final judgment of said court.
33rd. The petition for the writ of error, and allowance thereof.
34th. The assignment of errors and prayer for reversal
249 filed with the petition for the writ of error.

35th. The writ of error, and allowance thereof.
36th. The supersedeas bond, and approval thereof.
37th. The citation, and the admission of service thereof.
38th. The return of the clerk of the supreme court of Iowa to the writ of error.
39th. The certificates of the clerk of the supreme court of Iowa to the record of said cause, and the endorsements upon each of the above-named papers.

The plaintiff in error further states,

That if it is held by this court in this case that sections 1884 and 1885 of the Code of Iowa (1897) are valid as against and lawfully apply to national banks duly organized under the laws of the United States and doing business as such in the State of Iowa, and to the plaintiff in error as an officer, to wit, the president, of one of such banks in receiving a deposit of money in and for such bank in the ordinary course of its business, that then he does not question the sufficiency of the evidence adduced upon the trial of said cause in the district court of Iowa in and for Fayette county to support the verdict of the jury and the judgment of said court against him; that he deems it unnecessary to set forth in the printed transcript of the record in this court all of such evidence; and that the portions above designated are all that he deems necessary to a consideration of the questions raised and errors assigned by him in this court.

JAMES H. EASTON,
Plaintiff in Error,
By H. T. REED, *His Attorney.*

Received copy of the foregoing statement this 7th day of June, 1901.

CHAS. W. MULLAN,
Attorney General of Iowa, Attorney for Defendant in Error.

[Endorsed:] In United States Supreme Court, October term, 1900. No. 658. James H. Easton, plaintiff in error, *vs.* The State of Iowa, defendant in error. Statement of the errors to be relied upon by plaintiff in error and of the parts of the record in support thereof. H. T. Reed, attorney, Cresco, Iowa.

250 [Endorsed:] File No. 18,143. Supreme Court U. S. October term, 1901. Term No. 313. James H. Easton, pl'ff in error, *vs.* The State of Iowa. Statement of errors & designation by plaintiff in error of parts of record to be printed & acceptance of service of same. Filed July 9th, 1901.

Endorsed on cover: File No. 18143. Iowa supreme court. Term No. 313. James H. Easton, plaintiff in error, *vs.* The State of Iowa. Filed May 4, 1901.